

IN THE SUPREME COURT OF ALABAMA
March 2, 2018

ORDER

IT IS ORDERED that Rule 32(B)(9), Alabama Rules of Judicial Administration, be adopted to read in accordance with the appendix to this order;

IT IS FURTHER ORDERED that current Rule 32(B)(9), "Split Custody," Alabama Rules of Judicial Administration, be renumbered as Rule 32(B)(10);

IT IS FURTHER ORDERED that the adoption of Rule 32(B)(9) and the renumbering of what is now Rule 32(B)(9) as Rule 32(B)(10) is effective June 1, 2018;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 32:

"Note from the reporter of decisions: The order adopting Rule 32(B)(9) and renumbering what was Rule 32(B)(9) as Rule 32(B)(10) effective June 1, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Sellers, and Mendheim, JJ., concur.

Witness my hand this 2nd day of March, 2018.



Clerk, Supreme Court of Alabama

FILED
March 2, 2018
2:10 pm
Clerk
Supreme Court of Alabama

APPENDIX

Rule 32(B)(9), Alabama Rules of Judicial Administration

(9) Credit for Third-Party Payment to Child.

(i) Social Security retirement, survivor's, or disability insurance benefits, veteran's benefits, railroad retirement, or any other third-party payments paid for the benefit of the children based on the support obligor's earnings record or other eligibility requirement attributable to the support obligor shall be credited against that parent's support obligation, for so long as that support obligation is being received by the support payee, as follows:

(1) Determine the total child-support obligation; then

(2) Determine the monthly benefit amount that is attributable to the obligor and that the support recipient receives for the children and then subtract that amount from the total child-support obligation.

(a) If the children's obligor-based benefit exceeds the total support amount, then no additional support amount should be ordered.

(b) If the children's obligor-based benefits are less than the obligor's total support amount, then the difference between the benefits received for the children and the total support amount becomes the ordered child-support obligation.

(ii) The following payments made for the benefit of a child by a third party shall not be credited toward the support obligor's child-support obligation:

(1) Payments that are not based on the support obligor's earnings record or other eligibility requirement attributable to the support obligor;

(2) Any payments resulting from the disability of the child;

(3) Any payment received in excess of the amount of child support owed to the child;

(4) Any payment received by the child shall not be credited against arrearages that accrued before the date the obligor was deemed eligible to receive the third-party payment;

(5) Social Security income benefits paid to the child;

(6) Adoption subsidy paid to adoptive parents of a special-needs child pursuant to § 26-10-20 et seq., Code of Alabama 1975.

IN THE SUPREME COURT OF ALABAMA
March 2, 2018

ORDER

IT IS ORDERED that the section entitled "CONSERVATION - Game & Fish" in Appendix B to Rule 20, Alabama Rules of Judicial Administration, "Supreme Court's Extended Schedule of Fines," be amended in accordance with the appendix attached to this order;

IT IS FURTHER ORDERED that this amendment be effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Appendix B to Rule 20:

"Note from the reporter of decisions: The order amending Appendix B to Rule 20, effective March 2, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 2nd day of March, 2018.



Clerk, Supreme Court of Alabama

FILED March 2, 2018 2:11 pm Clerk Supreme Court of Alabama
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APPENDIX

APPENDIX B (to Rule 20)

SUPREME COURT'S EXTENDED SCHEDULE OF FINES

CONSERVATION-- Game & Fish: Code Section or Regulation No.:	Offense	Scheduled Fine
9-1-1	Making false statement to obtain license	\$250
9-1-3	Lending, borrowing, or selling license	\$250
9-11-22	Failure to tag commercial fishing gear	\$250
9-11-25	Unlawful to borrow, lend, or alter a license or for issuing agent to backdate a license	\$250
9-11-44	Hunting without a license	\$100
9-11-44.1(a)	Obtaining hunting license without presenting proof of hunter education	\$100
9-11-44.1(b)	Issuing license without proof of hunter-education certification	\$100
9-11-44.1(c)	Hunting with lifetime license without completing hunter-education-certification program	\$100
9-11-44.1(d)	Fraudulently issuing or obtaining hunter-education certification	\$100
9-11-44.1(e)	Failure to surrender revoked or canceled hunter-education certification	\$100
9-11-44.1(h)	Hunting without supervision	\$100
9-11-45(e)	Hunting or using shooting range without wildlife- management-area license ¹	\$25

9-11-45(e)	Hunting on state-operated wildlife-management areas without special annual management-area license	\$25 (residents) Not less than 3 times the cost of license (nonresidents)
9-11-51(a)	Hunting without a license (resident)	\$75
9-11-51(a)	Hunting without a license (resident)-- all game	\$100
9-11-51(a)	Hunting without a license (resident)-- small game	\$75
9-11-51(b)	Hunting without a license (nonresident) -- all game	\$825
9-11-51(b)	Hunting without a license (nonresident) -- small game	\$270
9-11-51(b)	Lending or transferring hunting license to another	\$75
9-11-51(c)	Hunting without a license (nonresident) ²	Not less than 3 times the cost of the nonresident license
9-11-53(a)	Fishing without a license (resident-ages 16-65)	\$50
9-11-53(c)	Borrowing, lending, altering, or backdating a license	\$250
9-11-53.2	Fishing without saltwater license (nonresident) (rod and reel)	\$50
9-11-55	Fishing without a license (nonresident, 16 years of age or older, annual)	\$100
9-11-56	Fishing without a license (nonresident, 16 years of age or older, trip)	\$100
9-11-56.3(f)	Fishing without a saltwater-pier fishing license	\$50 minimum

9-11-56.3(f)	Operating a fishing pier without a license as required by Section 9-11-56.3(a)	\$2,000
9-11-59(a)	Trapping without a license	\$250
9-11-59(b)	Trapping without tagged traps	\$50
9-11-63	Operating as fur dealer without a license	\$500
9-11-80	Crossing posted lands without permission to fish	\$100
9-11-84	Selling game fish taken from public waters	\$500
9-11-87	Taking game fish by means other than hook and line, etc.	\$100
9-11-89	Using game fish for bait	\$50
9-11-91(a)	Fishing without a permit in a private pond (ordinary fishing tackle)	\$250
9-11-91(a)	Taking fish from private ponds, without a permit, by traps, hook and line, or rod and reel	\$250
9-11-93	Taking fish from public waters by poisons or explosives	\$500
9-11-94	Taking fish by means not expressly allowed (stun devices, etc.)	\$500
9-11-142	Commercial fishing without a license	\$250
9-11-147	Failing to mark or identify commercial fishing gear	\$250
9-11-148	Possession of game fish by commercial fishermen	\$250
9-11-149	Using commercial fishing gear within 1/2 mile below a dam	\$100
9-11-153	Selling nongame fish without wholesale/retail fish dealers' license	\$100
9-11-154	Failure of fish dealer to maintain records or to allow inspection of records	\$100

9-11-171	Spearing of commercial or nongame fish without license	\$50
9-11-197	Taking fish from wire basket by unlicensed person	\$50
9-11-232	Possession, sale, purchase, etc., of protected wild birds, their eggs, plumage, or any body part	\$100
9-11-234	Hunting on state or federal refuge	\$250
9-11-235	Hunting at night	\$2,000
9-11-236	Hunting or possession during closed season	\$250
9-11-237	Selling, buying, or offering to sell any part of game bird or animal without license	\$250
9-11-238	Hunting wild turkey with dogs	\$50
9-11-241	Hunting/trapping without permission (day)	\$1,000
9-11-242	Hunting/trapping without permission (night)	\$1,000
9-11-242	Hunting/trapping without a permit (nighttime)	\$1,000 (1 st Offense)
9-11-244	Hunting by aid of bait (deer and wild turkey)	\$250
9-11-244	Hunting by aid of bait (small game)	\$25
9-11-245	Using unlawful methods of hunting (snare, poison, etc.)	\$100
9-11-250	Taking deer from public water	\$500
9-11-251	Taking deer at night	\$500
9-11-254	Exceeding limit of traps for one day for fur-bearing animals	\$25

9-11-257	Hunting from a public road/railroad	\$1,000
9-11-266	Failing to check traps within time limit; suspending bait over or within 25 feet of a steel trap	\$50
9-11-432	Waterfowl hunting without a state license	\$50
9-12-203	Alligator farming without a license	\$250
220-2-.01	Hunting not in accordance with stated times, places, manners, and means	\$100
220-2-.01	Running dogs during and in area of spring turkey season	\$100
220-2-.01(1) (a)	Running deer with dogs during stalk-hunting-only season	\$200
220-2-.02	Using illegal firearms or ammunition for hunting	\$50
220-2-.02(1) (a)	Using prohibited method/possessing prohibited firearm/ammunition	\$50
220-2-.02(1) (b)	Refusal to submit firearm for inspection	\$50
220-2-.02(1) (c)	Using illegal firearms or bow for hunting (light source attached)	\$50
220-2-.02(1) (d)	Possessing night-vision equipment while hunting	\$150
220-2-.02(4)	Hunting migratory game birds with unplugged guns	\$50
220-2-.03	Archery hunting with prohibited equipment	\$50
220-2-.05	Hunting game birds outside legal hours	\$100
220-2-.07	Hunting game animals outside legal hours	\$100
220-2-.08	Running deer dogs during closed season	\$100

220-2-.10	Possession of firearms while bow hunting	\$100
220-2-.11	Hunting by prohibited means	\$200
220-2-.11(5)	Using or possessing illegal decoy while turkey hunting	\$100
220-2-.12	Refusing to allow inspection of hunting coat, game bag, etc.	\$250
220-2-.14	Taking unantlered* deer	\$100
220-2-.15	Destroying sex of deer or wild turkey	\$200
220-2-.18	Exceeding or attempting to exceed the bag limit (big game) ³	\$100
220-2-.18	Exceeding or attempting to exceed the bag limit (small game) ³	\$100
220-2-.21	Unauthorized possession of bow, arrow, or firearm	\$50
220-2-.23	Hunting, trapping, or fishing without a license in possession	\$50
220-2-.24	Illegal possession of carcass/hides	\$100
220-2-.26	Illegal possession, sale, or importation of certain animals and fish	\$250
220-2-.29	Trapping in closed season	\$250
220-2-.30	Fur-catcher violations	\$50
220-2-.31	Hanging or suspending bait over or within 25 feet of steel trap	\$50
220-2-.35	Possession of over the legal creel limit	\$50

220-2-.36	Violating public-fishing-lake regulation	\$50
220-2-.36(2)	Taking fish from public lakes without permit	\$25
220-2-.36(3)	Leaving child under 12 years of age unattended at state fishing lake	\$25
220-2-.37	Violating public-access-area regulation	\$50
220-2-.38	Taking suckers by prohibited means, methods, and areas	\$100
220-2-.44	Taking fish by prohibited means	\$200
220-2-.44(1)	Taking fish by prohibited methods (drag nets)	\$200
220-2-.44(2)	Taking fish by prohibited methods (firearms)	\$100
220-2-.44(3)	Taking fish by prohibited methods (use of seine)	\$200
220-2-.44(4)	Taking fish by prohibited methods (trotline, box, etc., within 1/2 mile below a dam)	\$100
220-2-.44(5)	Taking fish by prohibited methods (removing fish from box, etc., at night)	\$250
220-2-.44(6)	Taking fish by prohibited methods (fishing from private property without a permit)	\$100
220-2-.44(7)	Taking fish by prohibited means (slat box without tags)	\$250
220-2-.44(8)	Taking fish by prohibited methods (trotlines/cotton ends)	\$50
220-2-.44(9)	Taking fish by prohibited methods (fileting fish while fishing or processing filets while on public water)	\$50
220-2-.46(1)	Violating legal methods for taking nongame fish (sport fishing)	\$100

220-2-.46(2)	Violating legal methods for taking nongame fish (commercial)	\$250
220-2-.46(3)	Violating legal methods for taking nongame fish (wire basket)	\$100
220-2-.47	Violating commercial-fishing regulation	\$250
220-2-.48	Illegal method/equipment in mussel harvest	\$250
220-2-.49	Possession of undersized mussels	\$250
220-2-.50	Mussel fishing at night	\$250
220-2-.51	Mussel fishing other than Monday through Friday	\$250
220-2-.52	Restricted areas to mussel fishing	\$250
220-2-.55	Violating wildlife-management-area regulations	\$50
220-2-.55(1)(a)	Hunting, etc., on management area without permit	\$25
220-2-.55(1)(h)	Possession of loaded firearm in vehicle while on management area	\$25
220-2-.56	Violating wildlife-management-area hunting- season dates	\$50
220-2-.60	Using airboat in prohibited area	\$50
220-2-.77	Violating waterfowl seasons, methods, and times	\$100
220-2-.85	Failure to wear hunter orange	\$50
220-2-.86	Transporting or releasing feral swine without a permit	\$250
220-2-.92	Possessing, etc., nongame species	\$250
220-2-.92(2)	Possessing, etc., nongame species (collect/sale box turtle)	\$100

220-2-.92(3)	Possessing, etc., nongame species (common snapper turtle, etc., size limit)	\$100
220-2-.92(4)	Possessing, etc., nongame species (possession limit of 10 turtles per day)	\$250
220-2-.93	Illegal importation/possession of rudd and roach fish	\$250
220-2-.94	Taking or possessing paddlefish	\$250
220-2-.95	Feeding, enticing, or violating nuisance- control regulation	\$100
220-2-.96(1)(d)	Violating alligator-farming regulation-importation	\$250
220-2-.97	Alligator-protection regulation	\$250
220-2-.98	Invertebrate-species regulation	\$150
220-2-.103	Mussel fishing in closed waters	\$250
220-2-.106	Mussel fishing in closed season	\$250
220-2-.109	Disabled wildlife-management-area-regulation violation	\$50
220-2-.112(a)	Releasing dog without landowner's permission	\$250
220-2-.112(b)	Using deer dog without collar	\$100
220-2-.115	Snagging fish on the Tennessee River	\$100
220-2-.118	Hunting without HIP permit after warning	\$50
220-2-.126	Violating any Division of Wildlife and Freshwater Fisheries public-shooting-range regulations	\$50
220-2-.130(a)	Using prohibited commercial gear in specific advisory areas or selling fish taken from such areas	\$250

220-2-.131	Unlawful activity on youth-turkey-hunting area	\$50

220-2-.134	Hunting on state park without a valid permit	\$100

220-2-.138	Unlawful activity by licensed gamebreeder	\$250

220-2-.139	Hunting or discharging a firearm near a dwelling	\$100

220-2-.142	Violating commercial turtle catcher/dealer/farmer regulations	\$250

220-2-.143	Alligator hunting violations (season, times, firearms, methods, etc.)	\$250

220-2-.146	Violating harvest-record regulation	\$50

220-2-.151	Violating any Division of Wildlife and Freshwater Fisheries archery-range regulations	\$50

IN THE SUPREME COURT OF ALABAMA
April 11, 2018

ORDER

IT IS ORDERED that Rule 26(e), Rule 27(j), and Rule 30(b), Alabama Rules of Disciplinary Procedure, be amended to read in accordance with Appendices A, B, and C, respectively, to this order;

IT IS FURTHER ORDERED that these amendments are effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 26, Rule 27, and Rule 30:

"Note from the reporter of decisions: The order amending Rule 26(e), Rule 27(j), and Rule 30(b), Ala. R. Disc. P., effective April 11, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 11th day of April, 2018.



Clerk, Supreme Court of Alabama

FILED
April 11, 2018
8:54 am
Clerk
Supreme Court of Alabama

APPENDIX A

Rule 26(e), Alabama Rules of Disciplinary Procedure

(e) Publication of Notice. The Disciplinary Board or Disciplinary Commission shall cause a notice of the surrender of license, disbarment, or suspension to be published in the official Bar publication and in a newspaper of general circulation in each judicial circuit of the State of Alabama in which the disciplined lawyer or the lawyer who has surrendered his or her license maintained an office for the practice of law. A notice of a lawyer's transfer to disability inactive status shall be published in the same manner. However, the notice shall indicate only that the lawyer has been transferred to inactive status.

APPENDIX B

Rule 27(j), Alabama Rules of Disciplinary Procedure

(j) Confidentiality of Rule 27 Proceedings. All pleadings and orders arising from a Rule 27 proceeding shall be confidential and shall not be publicly available. Publication pursuant to Rule 26(e) and Rule 33(a) of a lawyer's transfer to Rule 27 inactive status shall not identify the reason for the lawyer's transfer and shall state only that the lawyer has been transferred to inactive status.

APPENDIX C

Rule 30(b), Alabama Rules of Disciplinary Procedure

(b) Proceedings That Are Not Confidential. Proceedings that are not confidential include petitions for reinstatement pursuant to Rule 28, proceedings for interim suspension and summary suspension pursuant to Rule 20, a character and fitness appeal pursuant to Rule V of the Rules Governing Admission to the Alabama State Bar, and all matters relating to a surrender of license or to public probation.

There shall be no confidentiality in a particular proceeding if the respondent lawyer makes the matter public or requests that it be made public.

IN THE SUPREME COURT OF ALABAMA
May 1, 2018

ORDER

IT IS ORDERED that the Comment to Rule 32(B)(9), Alabama Rules of Judicial Administration, be adopted to read in accordance with the appendix to this order;

IT IS FURTHER ORDERED that the Comment is effective June 1, 2018;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 32:

"Note from the reporter of decisions: The order adopting the Comment to the adoption of Rule 32(B)(9), effective June 1, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 1st day of May, 2018.



Clerk, Supreme Court of Alabama

FILED
May 1, 2018
1:04 pm
Clerk
Supreme Court of Alabama

APPENDIX

Comment to Adoption of Rule 32(B)(9) Effective June 1, 2018

A new subdivision (9) was added to subsection (B) and what was subdivision (9) was renumbered subdivision (10). The new subdivision (9) allows the obligor to receive credit against child-support obligations for certain third-party payments made directly to the payee. Subsection (B)(9)(i) is based on Section 3.07 (Social Security Benefit Credit) of the 2013 Michigan Child Support Formula Manual (effective January 1, 2013), which provides credits for certain benefits provided by government insurance programs, with the addition of credit for other third-party payments such as railroad retirement benefits.

Subsection (B)(9)(i) is consistent with current Alabama caselaw. In Goldman v. Goldman, 197 So. 3d 487 (Ala. Civ. App. 2015), the Alabama Court of Civil Appeals held that the veteran's disability benefits of the former husband were to be considered income for purpose of calculating his child-support obligation. A noncustodial parent cannot be required to pay child support when Social Security payments received by a child based on a parent's disability exceeds the guideline amounts. Self v. Self, 685 So. 2d 732 (Ala. Civ. App. 1996). The obligor is also entitled to a credit against his or her obligation when a child receives benefits based on the obligor's retirement benefits. Adams v. Adams, 107 So. 3d 194 (Ala. Civ. App. 2012). Notwithstanding, if the third-party payment to the child is stopped for any reason, the child support owed by the obligor remains the amount of the existing child-support order. For example, if a child is receiving a third-party payment from Social Security that terminates when the child reaches the age of 18, the obligation of the obligor to pay the court-ordered child support will remain in effect until the child reaches the age of majority.

The exclusions of credit enumerated in subsection (B)(9)(ii) reflect current Alabama law. Alabama has consistently held that credit is not allowed for a benefit a child receives based on the work history of someone other than the obligor. See Hebert v. Stephenson, 574 So. 2d 835 (Ala. Civ. App. 1990). See also the court's discussion in Hebert regarding child-support credit based on the child's own disability. 574 So. 2d at 837. Also, the exclusion of credit

for Social Security income benefits in subsection (B)(9)(ii)(5) is consistent with Lightel v. Myers, 791 So. 2d 955 (Ala. Civ. App. 2000), holding that a parent should not get credit for the Social Security income benefits payable to the child as a "supplement to income" for the child based on the child's disability, as was clarified by the court in Adams v. Adams, 107 So. 3d 194 (Ala. Civ. App. 2012), which held that credit could be given to a parent whose child received Social Security retirement benefits based on the parent's work history and, thus, are a "substitute income source." Likewise, the exclusion of credit for adoption-subsidy pay in subsection (B)(9)(ii)(6) is consistent with current law because the adoption subsidy is not a "substitute income source"; rather, it is supplemental to the adoptive parents' income. W.R. v. C.R., 75 So. 3d 159 (Ala. Civ. App. 2011).

IN THE SUPREME COURT OF ALABAMA
June 15, 2018

ORDER

IT IS ORDERED that Rule 11(c), Alabama Rules of Appellate Procedure, be amended to read in accordance with Appendix A to this order and that the Committee Comments to the Amendment to Rule 11(c), Alabama Rules of Appellate Procedure, be adopted to read in accordance with Appendix B to this order;

IT IS FURTHER ORDERED that the Committee Comments to Rule 1, Alabama Rules of Appellate Procedure, be adopted to read in accordance with Appendix C to this order;

IT IS FURTHER ORDERED that the amendment of Rule 11(c) and the adoption of the Committee Comments to Rule 1 and to the amendment to Rule 11(c) are effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 1 and Rule 11:

"Note from the reporter of decisions: The order amending Rule 11(c) and adopting the Committee Comments thereto and the Committee Comments to Rule 1 effective June 15, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 15th day of June, 2018.



Clerk, Supreme Court of Alabama

FILED
June 15, 2018
12:59 pm
Clerk
Supreme Court of Alabama

APPENDIX A

Rule 11(c)

Alabama Rules of Appellate Procedure

(c) Extension of Time for Completion of Record; Reduction in Time. The trial court for cause shown may extend the time for completing and filing the clerk's record and the reporter's transcript in a civil case, and the reporter's transcript of proceedings and the record on appeal in a criminal case; provided that a motion for extension shall have been made within the time originally prescribed or within the period of an extension previously granted. The trial court may grant a 7-day (1-week) extension of time to complete the reporter's transcript of proceedings in either a civil or criminal case. For good cause shown, the trial court may grant up to three (3) additional 7-day (1-week) extensions, but no more than a total of four (4) such extensions shall be granted by the trial court and in no event shall an extension be granted to a date later than 84 days (12 weeks) from the filing of the notice of appeal. The trial court may grant a 7-day (1-week) extension of time to complete the clerk's record in a civil case. For good cause shown, the trial court may grant one additional 7-day (1-week) extension, but no more than a total of two (2) such extensions shall be granted by the trial court and in no event shall an extension be granted to a date later than 42 days (6 weeks) from the filing of the notice of appeal. The trial court may grant a 7-day (1-week) extension of time to complete the record on appeal in a criminal case.

If the trial court is without authority to grant a further extension or has denied a request therefor, the appellate court may, on motion for good cause shown, grant a 7-day (1-week) extension for filing the clerk's record, the reporter's transcript, or the record on appeal in either a civil or criminal case; provided that a motion for extension shall have been received in the clerk's office of the appellate court within the time originally prescribed or within an extension previously granted. For good cause shown, the appellate court may grant additional 7-day (1-week) extensions; provided that a motion for extension shall have been received in the clerk's office of the appellate court within the time originally prescribed or within an extension previously granted.

The clerk of the trial court shall notify the parties to the appeal of any extension of time for completion of the record.

APPENDIX B

Committee Comments to Amendment to Rule 11(c)
Effective June 15, 2018

The amendment adds the last sentence of the first paragraph of subdivision (c), which provides that the trial court may grant one 7-day (1-week) extension for the preparation of the record on appeal in a criminal case.

APPENDIX C

Committee Comments to Rule 1 Effective June 15, 2018

In 1971, the Alabama Legislature authorized the Alabama Supreme Court to promulgate "a new system of rules to govern procedure in appeals to the Supreme Court of Alabama, to the Court of Civil Appeals of Alabama, and to the Court of Criminal Appeals of Alabama." Act No. 964, Ala. Acts 1971. The purpose was to "simplify[]" existing appellate procedure and to assure "the speedy determination of litigation in the Supreme Court of Alabama and in said courts of appeals on its merits." *Id.* A committee was formed to draft the new rules. See J.H. Alsbrooks & J.H. Ritch, Comment, The Alabama Appellate Process-Part II, 6 Cumb. L. Rev. 63, 63 (1975).

In 1973, the people of Alabama ratified Amendment No. 328 to the Alabama Constitution of 1901, creating a unified judicial system. Section 6.11 of Amendment No. 328 (now codified as § 150 of the Alabama Constitution of 1901) vests in the Supreme Court express authority to promulgate rules of practice and procedure. Section 150 limits the Supreme Court's rulemaking power by providing that the Court's rules "shall not abridge, enlarge, or modify the substantive right of any party nor affect the jurisdiction of circuit or district courts or venue of actions therein" or impinge upon the right to trial by jury. The Court's rulemaking power is not exclusive. Section 150 provides that the legislature may change a rule of practice or procedure by a general act of statewide application. See Schoenvogel ex rel. Schoenvogel v. Venator Grp. Retail, Inc., 895 So. 2d 225, 235, 258 (Ala. 2004) (discussing the rulemaking power generally and concluding that, when a legislative statute of procedure conflicts with a judicial rule of procedure, the rule or statute last in time promulgated will prevail).

The Supreme Court adopted the modern version of the Alabama Rules of Appellate Procedure on June 17, 1975. See J.H. Alsbrooks & J.H. Ritch, supra at 63 note. The rules became effective on December 1, 1975. See Rule 49(1), Ala. R. App. P.

Alabama's rules were modeled after the Federal Rules of Appellate Procedure, which became effective in 1968. See Richard H. Gill, The Proposed Alabama Appellate Rules: An

Overview, 26 Ala. L. Rev. 639, 641-42 (1974); 16A Charles Alan Wright et al., Federal Practice and Procedure § 3945, p. 1 (2008). "The choice of the Federal Appellate Rules as a model was a natural one for two reasons: first, the federal rules represent the most extensively studied and carefully reviewed body of appellate rules available; secondly, the Alabama Rules of Civil Procedure are modeled on their federal counterparts, making a meshing of the trial and appellate rules both simple and appropriate. Virtually all state courts undertaking new appellate rules have relied on the Federal Rules of Appellate Procedure to some extent. A third reason for beginning with the Federal Appellate Rules was a pragmatic one: The committee felt that it would be rendering a service to the bar of the state to have, as far as possible, a single set of rules for the practitioner to learn and use." Richard H. Gill, supra at 642 (footnotes omitted). Thus, federal cases construing federal appellate rules are considered persuasive authority for cases in which similar Alabama appellate rules are being construed. See Ex parte P&H Constr. Co., 723 So. 2d 45, 47 (Ala. 1998).

IN THE SUPREME COURT OF ALABAMA
September 20, 2018

ORDER

IT IS ORDERED that the Committee Comments to Rule 83, Alabama Rules of Civil Procedure, be adopted to read in accordance with the appendix to this order;

IT IS FURTHER ORDERED that these Committee Comments to Rule 83 are effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 83:

"Note from the reporter of decisions: The order adopting the Committee Comments effective September 20, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 20th day of September, 2018.



Clerk, Supreme Court of Alabama

FILED September 20, 2018 1:35 pm Clerk Supreme Court of Alabama

APPENDIX

Committee Comments to Rule 83, Adopted September 20, 2018

The committee remains concerned with the damage to uniformity that can result from local rules. However, the committee does not wish to discourage case-management plans for local circuits and believes that such plans do not violate Rule 83. Further, the recommendations of the Circuit Judges Time Standards Committee and the District Judges Time Standards Committee to be implemented by the courts and appropriate agencies of the Unified Judicial System strongly endorse case-management plans. Such plans can establish tracks with scheduling and discovery provisions that are appropriate for various types of litigation. In fact, the Jefferson Circuit Court has operated under a case-management plan for over 20 years with notable efficiency, and that plan (which serves as an example of a proper case-management plan) may be found on the Web site of the Jefferson Circuit Court (<http://10jc.alacourt.gov/DCMPRevision.html>). To avoid any misunderstanding regarding the scope and intent of Rule 83, the committee notes that the language in the April 14, 1992, Amendment to Rule 83 or in the Committee Comments to that amendment is not intended to affect the validity of an appropriate case-management plan.

Any case-management plan is subject to the Supreme Court of Alabama's general supervisory power to reject or to require amendment. Any circuit adopting a case-management plan shall ensure that it is published (including, but not limited to, being made available on the Web site of the circuit), so that the provisions of the case-management plan are readily available to the public.

IN THE SUPREME COURT OF ALABAMA
September 20, 2018

ORDER

IT IS ORDERED that Regulation 2.7 and Regulation 4.1, Rules for Mandatory Continuing Legal Education, be amended to read in accordance with Appendices A and B, respectively, to this order;

IT IS FURTHER ORDERED that Regulation 3.9, Rules for Mandatory Continuing Legal Education, be adopted to read in accordance with Appendix C to this order;

IT IS FURTHER ORDERED that the amendment of Regulation 2.7 and Regulation 4.1 and the adoption of Regulation 3.9 are effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow the regulations following Rule 2, Rule 3, and Rule 4:

"Note from the reporter of decisions: The order amending Regulation 2.7 and Regulation 4.1 and adopting Regulation 3.9 effective September 20, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 20th day of September, 2018.



Clerk, Supreme Court of Alabama

FILED September 20, 2018 1:36 pm Clerk Supreme Court of Alabama

APPENDIX A

Regulation 2.7

2.7 An attorney who maintains a residence and a principal office for the practice of law in a state other than Alabama that requires MCLE and who can demonstrate compliance with the MCLE requirements of that state is exempt from these rules, except as provided in Rules 7 and 9. Any attorney claiming this exemption shall submit an affidavit to the MCLE Commission, in such form as its executive director shall prescribe, accompanied by a filing fee of \$25.00.

APPENDIX B

Regulation 4.1

4.1 Applications for status as a preapproved sponsor shall be accompanied by a fee of \$350.00.

APPENDIX C

Regulation 3.9

3.9 This requirement may be satisfied through the provision of pro bono legal assistance exclusively through an approved pro bono provider. For purposes of this rule, an approved pro bono provider is a not-for-profit legal-aid organization, bar, or court sponsoring a pro bono program that is approved by the Alabama State Bar as set forth in Rule 6.6 of the Alabama Rules of Professional Conduct. The MCLE Commission shall award 1 hour of MCLE credit for every 6 hours of pro bono work completed, for a maximum of 3 MCLE credits in a 12-month period beginning October 1 and ending September 30. If less than 6 hours of pro bono work are completed between October 1 and September 30 of the reporting year, no MCLE credit shall be awarded. On October 1 of each year, the approved pro bono providers shall report the name of each attorney who met those requirements for the preceding year to the MCLE Commission, along with the number of credits awarded each attorney. Self-reporting shall not be permitted under this provision. Credit earned through this provision may not be used to complete a deficiency plan or to satisfy requirements for reinstatement, reactivation, or readmission.

IN THE SUPREME COURT OF ALABAMA
September 20, 2018

ORDER

IT IS ORDERED that Rule 39, Alabama Rules of Judicial Administration, be amended to read in accordance with the appendix attached to this order;

IT IS FURTHER ORDERED that the amendment of Rule 39 is effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 39:

"Note from the reporter of decisions: The order amending Rule 39 effective September 20, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 20th day of September, 2018.



Clerk, Supreme Court of Alabama

FILED September 20, 2018 1:37 pm Clerk Supreme Court of Alabama

APPENDIX

Rule 39. DUTIES OF STATE LAW LIBRARIAN

The state law librarian shall have the following duties:

(A) The state law librarian shall be the director of the Supreme Court and State Law Library.

(B) The state law librarian shall appoint such professional librarians, research attorneys, and support personnel as are necessary for the efficient operation of the Supreme Court and State Law Library.

(C) The state law librarian shall furnish the legal materials needed by the Justices, Judges, and support personnel of the Alabama appellate courts. In doing so, the librarian is authorized to exchange court reports, codes, and other materials with other states.

(D) The state law librarian shall make the Supreme Court and State Law Library available to the appellate courts, the legislature, the Governor's office, state agencies, federal agencies, trial court judges, district attorneys, students and faculty of education institutions, and the public.

(E) The state law librarian shall prepare an annual budget for the operation of the Supreme Court and State Law Library.

(F) The state law librarian shall administer the library fund of the Supreme Court and State Law Library. That fund shall consist of funds appropriated by the legislature; fees collected under the provisions of law; moneys collected from the sale of copies, books, and other materials or received from donations, gifts, or grants; and funds other than those appropriated. All moneys coming to the library from all sources shall be put in the library fund. The library fund shall be deposited in a financial institution in the same manner as it was deposited in the court year immediately preceding the adoption of this rule. The library fund shall be deposited in an approved state depository that is insured by either the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation and shall be deposited in an interest bearing account if such an account is available. Expenditures out of this fund shall be made by the

state law librarian as are appropriate to accomplish the duties enumerated herein. The library fund shall be audited by the Examiners of Public Accounts the same as in the past.

(G) The state law librarian shall work with the trial judges, bar associations, and county officials in an effort to establish and maintain a county law library in each courthouse under the provisions of Alabama Code 1975, §§ 11-25-1 through 11-25-12, in order to have adequate research facilities for the courts, attorneys, public officials, and the public.

(H) The state law librarian shall perform any other duties required by law, rule, court order, or directive of the Justices.

IN THE SUPREME COURT OF ALABAMA
September 27, 2018

ORDER

IT IS ORDERED that Alabama Pattern Jury Instructions - Criminal for "Penalty Proceedings--Capital Cases" be amended to read in accordance with the appendix attached to this order;

IT IS FURTHER ORDERED that this amendment is effective immediately.

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 27th day of September, 2018.



Clerk, Supreme Court of Alabama

FILED September 27, 2018 9:28 am Clerk Supreme Court of Alabama

APPENDIX

Penalty Proceedings--Capital Cases (Where Defendant Was 18 Years Old or Older at Time of Offense) *

*See Roper v. Simmons, 543 U.S. 551 (2005) (holding that juvenile offenders are not eligible for death penalty), and Miller v. Alabama, 567 U.S. 460 (2012) (holding unconstitutional statutory sentencing scheme mandating life imprisonment without the possibility of parole for juvenile offenders).

[These Pattern Jury Instructions for penalty-phase proceedings in capital cases have been revised to reflect the repeal by Act No. 2017-131 of the judicial override. Act No. 2017-131 is applicable only to "any defendant who is charged with capital murder after the effective date of this Act" (i.e., April 11, 2017) and "shall not apply retroactively to any defendant who has previously been convicted of capital murder and sentenced to death prior to the effective date of this Act." Act No. 2017-131, § 2.]

[Read one of these choices:

- I. Same jury as guilt phase and automatic aggravator
- II. Same jury as guilt phase and no automatic aggravator
- III. Same jury as guilt phase and no aggravator
- IV. Different jury than guilt phase and automatic aggravator
- V. Different jury than guilt phase and no automatic aggravator
- VI. Different jury than guilt phase and no aggravator]

I. SAME JURY AS GUILT PHASE AND AUTOMATIC AGGRAVATOR

A. INSTRUCTIONS BEFORE PENALTY PHASE BEGINS

Ladies and gentlemen of the jury, you have found the defendant guilty of the capital offense(s) of [list the capital offense(s) defendant was convicted of as listed in Alabama Code 1975, Section 13A-5-40(a)].

We are now about to begin the penalty-phase proceeding. This phase will be similar in format to the guilt-phase proceeding you have just completed. However, the duty now before you is to decide whether the punishment shall be

death or life imprisonment without the possibility of parole.

The State and the defendant will have the opportunity to present evidence relative to the nature of the crime and the character of the defendant. You are instructed that this evidence, considered with the evidence you have already heard in the guilt phase, is presented in order that you might determine, first, whether any additional aggravating circumstance(s) exist(s) beyond the one(s) established by your guilty verdict and, second, whether the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s). At the conclusion of the taking of the evidence and after argument of counsel, you will be instructed on the factors in aggravation and mitigation you may consider.

B. INSTRUCTIONS AFTER THE TAKING OF EVIDENCE AND THE ARGUMENT OF COUNSEL

1. Duty

Ladies and gentlemen of the jury, it is now your duty to decide whether the punishment shall be death or life imprisonment without the possibility of parole. The law of this State provides that the punishment for the capital offense(s) of [list the capital offense(s) defendant was convicted of as listed in Alabama Code 1975, Section 13A-5-40(a)], for which this defendant has been convicted, is either death or life imprisonment without the possibility of parole. The law also provides that the punishment that should be imposed upon the defendant depends on whether any aggravating circumstance(s) exist(s) beyond a reasonable doubt and, if so, whether the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s).

2. Aggravating and Mitigating Circumstances

An aggravating circumstance is a circumstance specified by law that indicates, or tends to indicate, that the defendant should be sentenced to death. A mitigating circumstance is any circumstance that indicates, or tends to indicate, that the defendant should be sentenced to life imprisonment

without the possibility of parole. The issue at this sentencing hearing concerns the existence of aggravating and mitigating circumstances, which you should weigh against each other to determine the punishment that you decide.

3. Evidence and Law

Your verdict should be based upon the evidence that you heard while deciding the guilt or innocence of the defendant and the evidence that has been presented to you in these proceedings, as well as the law of which I am instructing you.

4. Automatic Aggravating Circumstances

[Give appropriate instruction(s) relating to the aggravating circumstance(s) (established by the guilt-phase verdict) as found in Appendix A, "Capital Offenses Containing an Aggravating Circumstance Established by the Guilt-Phase Verdict."]

5. Nonautomatic Aggravating Circumstances

[Give this instruction only if the State is offering an aggravating circumstance(s) in addition to the aggravating circumstance(s) established by the guilt-phase verdict. If the State is not offering an additional aggravating circumstance(s), proceed to 6.]

- a. As previously stated, your verdict in the guilt phase, finding the defendant guilty as charged in the indictment, established by law the existence of the following aggravating circumstance(s): [List appropriate aggravating circumstance(s) found in Appendix B, "Aggravating Circumstances."].
- b. The additional aggravating circumstance(s) proffered by the State that you may consider is/are limited to the following: [List appropriate aggravating circumstances proffered as found in Appendix B, "Aggravating Circumstances."].

- c. The State has the burden of proving beyond a reasonable doubt the existence of the aggravating circumstance(s) [list the additional aggravating circumstance(s) the State is attempting to prove from Appendix B]. The phrase "reasonable doubt" is self-explanatory. Efforts to define it do not always clarify the term. It is not a mere possible doubt because everything relating to human affairs is open to some possible or imaginary doubt. A reasonable doubt is a doubt of a fair-minded juror honestly seeking the truth after careful and impartial consideration of all the evidence in the case. It is a doubt based upon reason and common sense. It does not mean a vague or arbitrary notion, but is an actual doubt based upon the evidence, the lack of evidence, a conflict in the evidence, or a combination thereof. It is a doubt that remains after going over in your mind the entire case and giving consideration to all the testimony and evidence. It is distinguished from a doubt arising from mere possibility, from bare imagination, or from fanciful conjecture.
- d. If, after considering all the evidence from both the guilt phase and this penalty phase, you are convinced of the existence of any of the proffered aggravating circumstance(s) beyond a reasonable doubt, it will then be your duty to consider that/those aggravating circumstance(s) during your sentencing deliberations. However, if you have a reasonable doubt about a proffered aggravating circumstance, you should not consider that aggravating circumstance during your sentencing deliberations. I remind you that your verdict in the guilt phase, finding the defendant guilty as charged in the indictment, established by law the existence of the following aggravating circumstance(s): [List appropriate aggravating circumstance(s) from Appendix B.].

6. Mitigating Circumstances

- a. The defendant is allowed to offer any evidence in mitigation--that is, evidence that indicates, or tends to indicate, that the defendant should be sentenced to life imprisonment without the possibility of parole instead of death. The defendant does not bear a burden of proof in this regard. All the defendant must do is simply present the evidence.
- b. The laws of this State provide that mitigating evidence shall include, but not be limited to, the following enumerated mitigating circumstances: [List appropriate mitigating circumstance(s) found in Appendix C, "Mitigating Circumstances."].
- c. The laws of this State further provide that mitigating circumstances shall not be limited to those I just listed, but shall also include any aspect of the defendant's character or background, any circumstances surrounding the offense, and any other relevant mitigating evidence that the defendant offers as support for a sentence of life imprisonment without the possibility of parole.
- d. If the factual existence of any evidence offered by the defendant in mitigation is in dispute, the State shall have the burden of disproving the factual existence of the disputed mitigation evidence by a preponderance of the evidence.
- e. The preponderance-of-the-evidence standard requires the State--in order to negate the existence of disputed mitigating evidence--to offer evidence of greater weight, or evidence that is more convincing, than that offered by the defendant.
- f. If you believe that the State's offered evidence outweighs, or is more convincing than, the mitigating evidence offered by the

defendant, then that mitigating evidence should not be considered in sentencing.

- g. On the other hand, if you believe that the State's offered evidence is of less or equal weight, or is less convincing, than the mitigating evidence offered by the defendant, then that mitigating evidence shall be considered in sentencing.
- h. Your determination concerning the existence of mitigating circumstances should not, however, be influenced by passion, prejudice, or any other arbitrary factors. Your determination should be based solely on the evidence presented and the law as I have explained it to you.

7. Special Verdict Form

[Give this instruction only if the State is offering an aggravating circumstance(s) in addition to the aggravating circumstance(s) established by the guilt-phase verdict. If the State is not offering an additional aggravating circumstance(s), proceed to 8.]

- a. Before you proceed to determine the defendant's sentence, you must first determine whether the State has proven beyond a reasonable doubt the existence of any aggravating circumstance(s) in addition to the aggravating circumstance(s) proven during the guilt phase. You will need to answer the following question(s): [Provide the jury with a special verdict form, an example of which is provided below, for each of the proffered aggravating circumstances.].

[Example special verdict form]:

Do you unanimously agree that the State of Alabama has proven beyond a reasonable doubt that the capital offense was [insert applicable circumstances, such as "especially heinous, atrocious, or cruel compared to other offenses"]?

_____ Yes _____ No

_____ Signature of foreperson

Only if you answer "yes" may you then consider that aggravating circumstance, in addition to the previously found automatic aggravating circumstance(s), in determining the sentence. After that, you should then proceed to determine whether the sentence shall be death or life imprisonment without the possibility of parole.

8. Reaching a Sentencing Verdict

- a. In determining punishment, you must avoid any influence of passion, prejudice, or any other arbitrary factor. Your deliberation and verdict should be based upon the evidence and testimony you have seen and heard and the law on which I have instructed you.
- b. The process of weighing the aggravating circumstances and the mitigating circumstances against each other in order to determine the proper punishment is not a mathematical process. In other words, you should not merely total the number of aggravating circumstances and compare that number to the total number of mitigating circumstances.
- c. The law of this State recognizes that it is possible, in at least some situations, that one or a few aggravating circumstances might outweigh a larger number of mitigating circumstances. The law of this State also recognizes that it is possible, in at least some situations, that a large number of aggravating circumstances might not outweigh one or a few mitigating circumstances. In other words, the law contemplates that different circumstances may be given different weights or values in determining the sentence in a case, and you, the jury, are to decide what weight or value is to be given to a particular circumstance in determining the

sentence in light of all the other circumstances in this case. You must do that in the process of weighing the aggravating circumstances against the mitigating circumstances.

- d. In order to bring back a verdict of death, at least 10 of your number must vote for death. In other words, a verdict of death must be: unanimous; or 11 for death and 1 for life imprisonment without the possibility of parole; or 10 for death and 2 for life imprisonment without the possibility of parole. Any number less than 10 cannot reach a verdict of death.
- e. In order to bring back a verdict of life imprisonment without the possibility of parole, at least seven jurors must vote to impose that sentence. In other words, in order for a verdict to be returned of life imprisonment without the possibility of parole it must be: unanimous; or 11 for life imprisonment without the possibility of parole and 1 for death; or 10 for life imprisonment without the possibility of parole and 2 for death; or 9 for life imprisonment without the possibility of parole and 3 for death; or 8 for life imprisonment without the possibility of parole and 4 for death; or 7 for life imprisonment without the possibility of parole and 5 for death. Any number less than seven cannot reach a verdict of life imprisonment without the possibility of parole.
- f. In addition to the verdict of either death or life imprisonment without the possibility of parole, your verdict form must contain the numerical vote, not who voted in which way, but the actual count.
- g. Now, ladies and gentlemen, if, after a full and fair consideration of all the evidence in this case and the law as the Court has instructed you, you are convinced that the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s), your verdict would be:

We, the jury, determine that the defendant,
[insert name of defendant], be sentenced to
death. The vote is as follows:

____ # for Death ____ # for Life imprisonment
without the possibility of parole

____ Signature of foreperson

- h. However, if, after a full and fair consideration of all the evidence and the law as the Court has instructed you, you are not convinced that the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s), your verdict would be:

We, the jury, determine that the defendant,
[insert name of defendant], be sentenced to life
imprisonment without the possibility of parole.
The vote is as follows:

____ # for Death ____ # for Life imprisonment
without the possibility of parole

____ Signature of foreperson

II. SAME JURY AS GUILT PHASE AND NO AUTOMATIC AGGRAVATOR

A. INSTRUCTIONS BEFORE PENALTY PHASE BEGINS

Ladies and gentlemen of the jury, you have found the defendant guilty of the capital offense(s) of [list the capital offense(s) defendant was convicted of under Alabama Code 1975, Section 13A-5-40(a)].

We are now about to begin the penalty-phase proceeding. This phase will be similar in format to the guilt-phase proceeding you have just completed. However, the duty now before you is to decide whether the punishment shall be death or life imprisonment without the possibility of parole.

The State and the defendant will have the opportunity to present evidence relative to the nature of the crime and

the character of the defendant. You are instructed that this evidence, when considered with the evidence you have already heard in the guilt phase, is presented in order that you might determine, first, whether any aggravating circumstance(s) exist(s) that would render death an available punishment option and, second, whether the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s). At the conclusion of the taking of the evidence and after argument of counsel, you will be instructed on the factors in aggravation and mitigation you may consider.

B. INSTRUCTIONS AFTER THE TAKING OF EVIDENCE AND THE ARGUMENT OF COUNSEL

1. Duty

Ladies and gentlemen of the jury, it is now your duty to decide whether the punishment shall be death or life imprisonment without the possibility of parole. The law of this State provides that the punishment for the capital offense(s) of [list the capital offense(s) defendant was convicted of under Alabama Code 1975, Section 13A-5-40(a)], for which this defendant has been convicted, is either death or life imprisonment without the possibility of parole. The law also provides that the punishment that should be imposed upon the defendant depends on whether any aggravating circumstance(s) exist(s) beyond a reasonable doubt and, if so, whether the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s).

2. Aggravating and Mitigating Circumstances

An aggravating circumstance is a circumstance specified by law that indicates, or tends to indicate, that the defendant should be sentenced to death. A mitigating circumstance is any circumstance that indicates, or tends to indicate, that the defendant should be sentenced to life imprisonment without the possibility of parole. The issue at this sentencing hearing concerns the existence of aggravating and mitigating circumstances, which you should weigh against each other to determine the punishment that you decide.

3. Evidence and Law

Your verdict should be based upon the evidence that you heard while deciding the guilt or innocence of the defendant and the evidence that has been presented to you in these proceedings, as well as the law of which I am instructing you.

4. Nonautomatic Aggravating Circumstances

- a. The aggravating circumstance(s) proffered by the State that you may consider is/are limited to the following: [List appropriate aggravating circumstances found in Appendix B, "Aggravating Circumstances."].
- b. The State has the burden of proving beyond a reasonable doubt the existence of the aggravating circumstance(s) [list the aggravating circumstance(s) the State is attempting to prove from Appendix B]. The phrase "reasonable doubt" is self-explanatory. Efforts to define it do not always clarify the term. It is not a mere possible doubt because everything relating to human affairs is open to some possible or imaginary doubt. A reasonable doubt is a doubt of a fair-minded juror honestly seeking the truth after careful and impartial consideration of all the evidence in the case. It is a doubt based upon reason and common sense. It does not mean a vague or arbitrary notion, but is an actual doubt based upon the evidence, the lack of evidence, a conflict in the evidence, or a combination thereof. It is a doubt that remains after going over in your mind the entire case and giving consideration to all the testimony and evidence. It is distinguished from a doubt arising from mere possibility, from bare imagination, or from fanciful conjecture.
- c. As I previously stated, the burden of proof is on the State to convince each of you beyond a reasonable doubt as to the existence of any aggravating circumstances to be considered by you in determining what the punishment is to be

in this case. This means that before you can even reach a verdict that the defendant's punishment be death, each and every one of you must be convinced beyond a reasonable doubt based on the evidence that at least one of the aggravating circumstances exist. If you are not unanimously convinced that one and the same aggravating circumstance exists beyond a reasonable doubt based on the evidence, then you must return a verdict sentencing the defendant to life imprisonment without the possibility of parole, regardless of whether there are any mitigating circumstances in this case.

- d. The evidence upon which a reasonable doubt about an aggravating circumstance may be based is both the evidence you heard in the guilt phase of this trial and the evidence you have heard in this sentence hearing. The defendant does not have to disprove anything about an aggravating circumstance. The burden is wholly upon the State to prove such a circumstance beyond a reasonable doubt. A reasonable doubt about an aggravating circumstance may arise from all the evidence, from any part of the evidence, or from a lack or failure of the evidence.
- e. In the event that you do not find that any aggravating circumstance(s) has/have been proven by the State, you need not concern yourself with the mitigating circumstances in this case. If you find beyond a reasonable doubt that [the aggravating circumstance]/[one or more of the aggravating circumstances] on which I instructed you does exist in this case, then you must proceed to consider and determine the mitigating circumstances.

5. Mitigating Circumstances

- a. The defendant is allowed to offer any evidence in mitigation--that is, evidence that indicates, or tends to indicate, that the defendant should be sentenced to life imprisonment without the possibility of parole instead of death. The defendant does not bear a burden of proof in

this regard. All the defendant must do is simply present the evidence.

- b. The laws of this State provide that mitigating evidence shall include, but not be limited to, the following enumerated mitigating circumstances: [List appropriate mitigating circumstance(s) found in Appendix C, "Mitigating Circumstances."].
- c. The laws of this State further provide that mitigating circumstances shall not be limited to those I just listed, but shall also include any aspect of the defendant's character or background, any circumstances surrounding the offense, and any other relevant mitigating evidence that the defendant offers as support for a sentence of life imprisonment without the possibility of parole.
- d. If the factual existence of any evidence offered by the defendant in mitigation is in dispute, the State shall have the burden of disproving the factual existence of the disputed mitigation evidence by a preponderance of the evidence.
- e. The preponderance-of-the-evidence standard requires the State--in order to negate the existence of disputed mitigating evidence--to offer evidence of greater weight, or evidence that is more convincing, than that offered by the defendant.
- f. If you believe that the State's offered evidence outweighs, or is more convincing than, the mitigating evidence offered by the defendant, then that mitigating evidence should not be considered in sentencing.
- g. On the other hand, if you believe that the State's offered evidence is of less or equal weight, or is less convincing, than the mitigating evidence offered by the defendant, then that mitigating evidence shall be considered in sentencing.

h. Your determination concerning the existence of mitigating circumstances should not, however, be influenced by passion, prejudice, or any other arbitrary factors. Your determination should be based solely on the evidence presented and the law as I have explained it to you.

6. Special Verdict Form

- a. Before you can reach a verdict of death, each and every one of you must be convinced beyond a reasonable doubt, based on the evidence, that at least one aggravating circumstance exists. If you cannot agree that at least one aggravating circumstance exists, you must return a verdict of life imprisonment without the possibility of parole. However, if you unanimously find at least one aggravating circumstance to exist beyond a reasonable doubt, you should then proceed to make a determination of death or life imprisonment without the possibility of parole.
- b. Therefore, before you proceed to determine the defendant's sentence, you must answer the following question(s): [Provide the jury with a special verdict form, an example of which is provided below, for each of the proffered aggravating circumstances.]

[Example special verdict form]:

Do you unanimously agree that the State of Alabama has proven beyond a reasonable doubt that the capital offense was [insert applicable circumstance, such as "especially heinous, atrocious, or cruel compared to other offenses"]?

_____ Yes _____ No

_____ Signature of foreperson

If you answer [this question]/[at least one of these questions] yes, you should then proceed to determine whether the sentence shall be death or life imprisonment without the possibility of parole. If you answer [this question]/[all of

these questions] no, you shall return a verdict of life imprisonment without the possibility of parole.

7. Reaching a Sentencing Verdict

- a. In determining punishment, you must avoid any influence of passion, prejudice, or any other arbitrary factor. Your deliberation and verdict should be based upon the evidence and testimony you have seen and heard and the law on which I have instructed you.
- b. The process of weighing the aggravating circumstances and the mitigating circumstances against each other in order to determine the proper punishment is not a mathematical process. In other words, you should not merely total the number of aggravating circumstances and compare that number to the total number of mitigating circumstances.
- c. The law of this State recognizes that it is possible, in at least some situations, that one or a few aggravating circumstances might outweigh a larger number of mitigating circumstances. The law of this State also recognizes that it is possible, in at least some situations, that a large number of aggravating circumstances might not outweigh one or a few mitigating circumstances. In other words, the law contemplates that different circumstances may be given different weights or values in determining the sentence in a case, and you, the jury, are to decide what weight or value is to be given to a particular circumstance in determining the sentence in light of all the other circumstances in this case. You must do that in the process of weighing the aggravating circumstances against the mitigating circumstances.
- d. In order to bring back a verdict of death, at least 10 of your number must vote for death. In other words, a verdict of death must be: unanimous; or 11 for death and 1 for life

imprisonment without the possibility of parole; or 10 for death and 2 for life imprisonment without the possibility of parole. Any number less than 10 cannot reach a verdict of death.

- e. In order to bring back a verdict of life imprisonment without the possibility of parole, at least seven jurors must vote to impose that sentence. In other words, in order for a verdict to be returned of life imprisonment without the possibility of parole it must be: unanimous; or 11 for life imprisonment without the possibility of parole and 1 for death; or 10 for life imprisonment without the possibility of parole and 2 for death; or 9 for life imprisonment without the possibility of parole and 3 for death; or 8 for life imprisonment without the possibility of parole and 4 for death; or 7 for life imprisonment without the possibility of parole and 5 for death. Any number less than seven cannot reach a verdict of life imprisonment without the possibility of parole.
- f. In addition to the verdict of either death or life imprisonment without the possibility of parole, your verdict form must contain the numerical vote, not who voted in which way, but the actual count.
- g. Now, ladies and gentlemen, if, after a full and fair consideration of all the evidence in this case and the law as the Court has instructed you, you are convinced beyond a reasonable doubt that at least one aggravating circumstance does exist and you are convinced that the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s), your verdict would be:

We, the jury, determine that the defendant, [insert name of defendant], be sentenced to death. The vote is as follows:

____ # for Death ____ # for Life imprisonment
without the possibility of parole

_____ Signature of foreperson

- h. However, if, after a full and fair consideration of all the evidence and the law as the Court has instructed you, you are not convinced beyond a reasonable doubt that at least one aggravating circumstance exists or that the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s), your verdict would be:

We, the jury, determine that the defendant, [insert name of defendant], be sentenced to life imprisonment without the possibility of parole. The vote is as follows:

___ # for Death ___ # for Life imprisonment
without the possibility of parole

Signature of foreperson

III. SAME JURY AS GUILT PHASE AND NO AGGRAVATOR

A. INSTRUCTIONS BEFORE PENALTY PHASE BEGINS

Ladies and gentlemen of the jury, you have found the defendant guilty of the capital offense(s) of [list the capital offense(s) defendant was convicted of under Alabama Code 1975, Section 13A-5-40(a)].

We are now about to begin the penalty-phase proceeding. This phase will be similar in format to the guilt-phase proceeding you have just completed. However, the duty now before you is to decide the punishment.

The State and the defendant will have the opportunity to present evidence relative to the nature of the crime and the character of the defendant. You are instructed that this evidence, when considered with the evidence you have already heard in the guilt phase, is presented in order that you might determine the punishment. At the conclusion of the taking of the evidence and after argument of counsel, you will be instructed further on the law.

B. INSTRUCTIONS AFTER THE TAKING OF EVIDENCE AND THE ARGUMENT OF COUNSEL

1. Duty

Ladies and gentlemen of the jury, it is now your duty to decide the punishment. The law of this State provides that the punishment for the capital offense(s) of [list the capital offense(s) defendant was convicted of under Alabama Code 1975, Section 13A-5-40(a)], for which this defendant has been convicted, is either death or life imprisonment without the possibility of parole. The law also provides that the punishment that should be imposed upon the defendant depends on whether any aggravating circumstances exist beyond a reasonable doubt and, if so, whether the aggravating circumstances outweigh the mitigating circumstances.

2. Aggravating and Mitigating Circumstances

However, the State has not offered any evidence of an aggravating circumstance. Therefore, as a matter of law, the sentence shall be life imprisonment without parole.

3. Evidence and Law

Your verdict should be based upon the evidence that you heard while deciding the guilt or innocence of the defendant and the evidence that has been presented to you in these proceedings, as well as the law of which I am instructing you. It should not be influenced by passion, prejudice, or any other arbitrary factor.

4. Sentencing Verdict

- a. Because no aggravating circumstance exists, you must return a verdict of life imprisonment without the possibility of parole.
- b. The law requires the jury to return a verdict even though you have only one option. In order to bring back a verdict of life imprisonment without the possibility of parole, at least

seven jurors must vote to impose that sentence. Any number less than seven cannot reach a verdict of life imprisonment without the possibility of parole.

- c. In addition to the verdict of life imprisonment without the possibility of parole, your verdict form must contain the numerical vote, not who voted in which way, but the actual count.
- d. Now, ladies and gentlemen, after a full and fair consideration of all the evidence in this case and in accordance with the law as the Court has instructed you, your verdict must be:

We, the jury, determine that the defendant, [insert name of defendant], be sentenced to life imprisonment without the possibility of parole. The vote is as follows:

___# for Life imprisonment without the possibility of parole

_____ Signature of foreperson

IV. DIFFERENT JURY THAN GUILT PHASE AND AUTOMATIC AGGRAVATOR

A. INSTRUCTIONS BEFORE PENALTY PHASE BEGINS

Ladies and gentlemen of the jury, in a separate proceeding the defendant has been found guilty of the capital offense(s) of [list the capital offense(s) defendant was convicted of under Alabama Code 1975, Section 13A-5-40(a)]. In this proceeding, you will not concern yourself with the question of guilt but rather with punishment.

We are now about to begin the penalty-phase proceeding. The duty now before you is to decide whether the punishment shall be death or life imprisonment without the possibility of parole.

The State and the defendant will have the opportunity to present evidence relative to the nature of the crime and the character of the defendant. You are instructed that

this evidence is presented in order that you might determine, first, whether any additional aggravating circumstance(s) exist(s) beyond the one(s) established by the guilty verdict and, second, whether the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s). At the conclusion of the taking of the evidence and after argument of counsel, you will be instructed on the factors in aggravation and mitigation you may consider.

B. INSTRUCTIONS AFTER THE TAKING OF EVIDENCE AND THE ARGUMENT OF COUNSEL

1. Duty

Ladies and gentlemen of the jury, it is now your duty to decide whether the punishment shall be death or life imprisonment without the possibility of parole. The law of this State provides that the punishment for the capital offense(s) of [list the capital offense(s) defendant was convicted of under Alabama Code 1975, Section 13A-5-40(a)], for which this defendant has been convicted, is either death or life imprisonment without the possibility of parole. The law also provides that the punishment that should be imposed upon the defendant depends on whether any aggravating circumstance(s) exist(s) beyond a reasonable doubt and, if so, whether the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s).

2. Aggravating and Mitigating Circumstances

An aggravating circumstance is a circumstance specified by law that indicates, or tends to indicate, that the defendant should be sentenced to death. A mitigating circumstance is any circumstance that indicates, or tends to indicate, that the defendant should be sentenced to life imprisonment without the possibility of parole. The issue at this sentencing hearing concerns the existence of aggravating and mitigating circumstances, which you should weigh against each other to determine the punishment that you decide.

3. Evidence and Law

Your verdict should be based upon the evidence that has been presented to you in these proceedings, as well as the law on which I am instructing you.

4. Automatic Aggravating Circumstances

[Give appropriate instruction(s) relating to the aggravating circumstance(s) (established by the guilt-phase verdict) as found in Appendix A, "Capital Offenses Containing an Aggravating Circumstance Established by the Guilt-Phase Verdict."]

5. Nonautomatic Aggravating Circumstances

[Give this instruction only if the State is offering an aggravating circumstance(s) in addition to the aggravating circumstance(s) established by the guilt-phase verdict. If the State is not offering an additional aggravating circumstance(s), proceed to 6.]

- a. As previously stated, the verdict reached by the jury in the guilt phase, finding the defendant guilty as charged in the indictment, established by law the existence of the following aggravating circumstance(s): [List appropriate aggravating circumstance(s) found in Appendix B, "Aggravating Circumstances."].
- b. The additional aggravating circumstance(s) proffered by the State that you may consider is/are limited to the following: [List appropriate aggravating circumstances proffered as found in Appendix B, "Aggravating Circumstances."].
- c. The State has the burden of proving beyond a reasonable doubt the existence of the aggravating circumstance(s) [list the additional aggravating circumstance(s) the State is attempting to prove from Appendix B]. The phrase "reasonable doubt" is self-explanatory. Efforts to define it do not always clarify the term. It is not a mere possible doubt because everything

relating to human affairs is open to some possible or imaginary doubt. A reasonable doubt is a doubt of a fair-minded juror honestly seeking the truth after careful and impartial consideration of all the evidence in the case. It is a doubt based upon reason and common sense. It does not mean a vague or arbitrary notion, but is an actual doubt based upon the evidence, the lack of evidence, a conflict in the evidence, or a combination thereof. It is a doubt that remains after going over in your mind the entire case and giving consideration to all the testimony and evidence. It is distinguished from a doubt arising from mere possibility, from bare imagination, or from fanciful conjecture.

- d. If, after considering all the evidence, you are convinced of the existence of any of the proffered aggravating circumstance(s) beyond a reasonable doubt, it will then be your duty to consider that/those aggravating circumstance(s) during your sentencing deliberations. However, if you have a reasonable doubt about a proffered aggravating circumstance, you should not consider that aggravating circumstance during your sentencing deliberations. I remind you that the verdict in the guilt phase, finding the defendant guilty as charged in the indictment, established by law the existence of the following aggravating circumstance(s): [List appropriate aggravating circumstance(s) from Appendix B.]

6. Mitigating Circumstances

- a. The defendant is allowed to offer any evidence in mitigation--that is, evidence that indicates, or tends to indicate, that the defendant should be sentenced to life imprisonment without the possibility of parole instead of death. The defendant does not bear a burden of proof in this regard. All the defendant must do is simply present the evidence.

- b. The laws of this State provide that mitigating evidence shall include, but not be limited to, the following enumerated mitigating circumstances: [List appropriate mitigating circumstance(s) found in Appendix C, "Mitigating Circumstances."].
- c. The laws of this State further provide that mitigating circumstances shall not be limited to those I just listed, but shall also include any aspect of the defendant's character or background, any circumstances surrounding the offense, and any other relevant mitigating evidence that the defendant offers as support for a sentence of life imprisonment without the possibility of parole.
- d. If the factual existence of any evidence offered by the defendant in mitigation is in dispute, the State shall have the burden of disproving the factual existence of the disputed mitigation evidence by a preponderance of the evidence.
- e. The preponderance-of-the-evidence standard requires the State--in order to negate the existence of disputed mitigating evidence--to offer evidence of greater weight, or evidence that is more convincing, than that offered by the defendant.
- f. If you believe that the State's offered evidence outweighs, or is more convincing than, the mitigating evidence offered by the defendant, then that mitigating evidence should not be considered in sentencing.
- g. On the other hand, if you believe that the State's offered evidence is of less or equal weight, or is less convincing, than the mitigating evidence offered by the defendant, then that mitigating evidence shall be considered in sentencing.
- h. Your determination concerning the existence of mitigating circumstances should not, however, be influenced by passion, prejudice, or any other

arbitrary factors. Your determination should be based solely on the evidence presented and the law as I have explained it to you.

7. Special Verdict Form

[Give this instruction only if the State is offering an aggravating circumstance(s) in addition to the aggravating circumstance(s) established by the guilt-phase verdict. If the State is not offering an additional aggravating circumstance(s), proceed to 8.]

- a. Before you proceed to determine the defendant's sentence, you must first determine whether the State has proven beyond a reasonable doubt the existence of any aggravating circumstance(s) in addition to the aggravating circumstance(s) proven during the guilt phase. You will need to answer the following question(s): [Provide the jury with a special verdict form, an example of which is provided below, for each of the proffered aggravating circumstances].

[Example special verdict form]:

Do you unanimously agree that the State of Alabama has proven beyond a reasonable doubt that the capital offense was [insert applicable circumstances, such as "especially heinous, atrocious, or cruel compared to other offenses"]?

_____ Yes _____ No

_____ Signature of foreperson

Only if you answer "yes" may you then consider that aggravating circumstance, in addition to the previously found automatic aggravating circumstance(s), in determining the sentence. After that, you should then proceed to determine whether the sentence shall be death or life imprisonment without the possibility of parole.

8. Reaching a Sentencing Verdict

- a. In determining punishment, you must avoid any influence of passion, prejudice, or any other arbitrary factor. Your deliberation and verdict should be based upon the evidence and testimony you have seen and heard and the law on which I have instructed you.
- b. The process of weighing the aggravating circumstances and the mitigating circumstances against each other in order to determine the proper punishment is not a mathematical process. In other words, you should not merely total the number of aggravating circumstances and compare that number to the total number of mitigating circumstances.
- c. The law of this State recognizes that it is possible, in at least some situations, that one or a few aggravating circumstances might outweigh a larger number of mitigating circumstances. The law of this State also recognizes that it is possible, in at least some situations, that a large number of aggravating circumstances might not outweigh one or a few mitigating circumstances. In other words, the law contemplates that different circumstances may be given different weights or values in determining the sentence in a case, and you, the jury, are to decide what weight or value is to be given to a particular circumstance in determining the sentence in light of all the other circumstances in this case. You must do that in the process of weighing the aggravating circumstances against the mitigating circumstances.
- d. In order to bring back a verdict of death, at least 10 of your number must vote for death. In other words, a verdict of death must be: unanimous; or 11 for death and 1 for life imprisonment without the possibility of parole; or 10 for death and 2 for life imprisonment without the possibility of parole. Any number less than 10 cannot reach a verdict of death.

- e. In order to bring back a verdict of life imprisonment without the possibility of parole, at least seven jurors must vote to impose that sentence. In other words, in order for a verdict to be returned of life imprisonment without the possibility of parole it must be: unanimous; or 11 for life imprisonment without the possibility of parole and 1 for death; or 10 for life imprisonment without the possibility of parole and 2 for death; or 9 for life imprisonment without the possibility of parole and 3 for death; or 8 for life imprisonment without the possibility of parole and 4 for death; or 7 for life imprisonment without the possibility of parole and 5 for death. Any number less than seven cannot reach a verdict of life imprisonment without the possibility of parole.
- f. In addition to the verdict of either death or life imprisonment without the possibility of parole, your verdict form must contain the numerical vote, not who voted in which way, but the actual count.
- g. Now, ladies and gentlemen, if, after a full and fair consideration of all the evidence in this case and the law as the Court has instructed you, you are convinced that the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s), your verdict would be:

We, the jury, determine that the defendant, [insert name of defendant], be sentenced to death. The vote is as follows:

___ # for Death ___ # for Life imprisonment
without the possibility of parole

_____ Signature of foreperson

- h. However, if, after a full and fair consideration of all the evidence and the law as the Court has instructed you, you are not convinced that the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s), your verdict would be:

We, the jury, determine that the defendant, [insert name of defendant], be sentenced to life imprisonment without the possibility of parole. The vote is as follows:

____ # for Death ____ # for Life imprisonment
without the possibility of parole

____ Signature of foreperson

V. DIFFERENT JURY THAN GUILT PHASE AND NO AUTOMATIC AGGRAVATOR

A. INSTRUCTIONS BEFORE PENALTY PHASE BEGINS

Ladies and gentlemen of the jury, in a separate proceeding the defendant has been found guilty of the capital offense(s) of [list the capital offense(s) defendant was convicted of under Alabama Code 1975, Section 13A-5-40(a)]. In this proceeding, you will not concern yourself with the question of guilt but rather with punishment.

We are now about to begin the penalty-phase proceeding. The duty now before you is to decide whether the punishment shall be death or life imprisonment without the possibility of parole.

The State and the defendant will have the opportunity to present evidence relative to the nature of the crime and the character of the defendant. You are instructed that this evidence is presented in order that you might determine, first, whether any aggravating circumstance(s) exist(s) that would render death an available punishment option and, second, whether the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s). At the conclusion of the taking of the evidence and after argument of counsel, you will be instructed on the factors in aggravation and mitigation you may consider.

B. INSTRUCTIONS AFTER THE TAKING OF EVIDENCE AND THE ARGUMENT OF COUNSEL

1. Duty

Ladies and gentlemen of the jury, it is now your duty to decide whether the punishment shall be death or life imprisonment without the possibility of parole. The law of this State provides that the punishment for the capital offense(s) of [list the capital offense(s) defendant was convicted of under Alabama Code 1975, Section 13A-5-40(a)], for which this defendant has been convicted, is either death or life imprisonment without the possibility of parole. The law also provides that the punishment that should be imposed upon the defendant depends on whether any aggravating circumstance(s) exist(s) beyond a reasonable doubt and, if so, whether the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s).

2. Aggravating and Mitigating Circumstances

An aggravating circumstance is a circumstance specified by law that indicates, or tends to indicate, that the defendant should be sentenced to death. A mitigating circumstance is any circumstance that indicates, or tends to indicate, that the defendant should be sentenced to life imprisonment without the possibility of parole. The issue at this sentencing hearing concerns the existence of aggravating and mitigating circumstances, which you should weigh against each other to determine the punishment that you decide.

3. Evidence and Law

Your verdict should be based upon the evidence that has been presented to you in these proceedings, as well as the law on which I am instructing you.

4. Nonautomatic Aggravating Circumstances

- a. The aggravating circumstance(s) proffered by the State that you may consider is/are limited to the following: [List appropriate aggravating

circumstances proffered as found in Appendix B, "Aggravating Circumstances."].

- b. The State has the burden of proving beyond a reasonable doubt the existence of the aggravating circumstance(s) [list the aggravating circumstance(s) the State is attempting to prove from Appendix B]. The phrase "reasonable doubt" is self-explanatory. Efforts to define it do not always clarify the term. It is not a mere possible doubt because everything relating to human affairs is open to some possible or imaginary doubt. A reasonable doubt is a doubt of a fair-minded juror honestly seeking the truth after careful and impartial consideration of all the evidence in the case. It is a doubt based upon reason and common sense. It does not mean a vague or arbitrary notion, but is an actual doubt based upon the evidence, the lack of evidence, a conflict in the evidence, or a combination thereof. It is a doubt that remains after going over in your mind the entire case and giving consideration to all the testimony and evidence. It is distinguished from a doubt arising from mere possibility, from bare imagination, or from fanciful conjecture.
- c. As I previously stated, the burden of proof is on the State to convince each of you beyond a reasonable doubt as to the existence of any aggravating circumstances to be considered by you in determining what the punishment is to be in this case. This means that before you can even reach a verdict that the defendant's punishment be death, each and every one of you must be convinced beyond a reasonable doubt based on the evidence that at least one of the aggravating circumstances exist. If you are not unanimously convinced that one and the same aggravating circumstance exists beyond a reasonable doubt based on the evidence, then you must return a verdict sentencing the defendant to life imprisonment without the possibility of parole, regardless of whether there are any mitigating circumstances in this case.

- d. The evidence upon which a reasonable doubt about an aggravating circumstance may be based is the evidence you have heard in this sentence hearing. The defendant does not have to disprove anything about an aggravating circumstance. The burden is wholly upon the State to prove such a circumstance beyond a reasonable doubt. A reasonable doubt about an aggravating circumstance may arise from all the evidence, from any part of the evidence, or from a lack or failure of the evidence.
- e. In the event that you do not find that any aggravating circumstance(s) has/have been proven by the State, you need not concern yourself with the mitigating circumstances in this case. If you find beyond a reasonable doubt that [the aggravating circumstance]/[one or more of the aggravating circumstances] on which I instructed you does exist in this case, then you must proceed to consider and determine the mitigating circumstances.

5. Mitigating Circumstances

- a. The defendant is allowed to offer any evidence in mitigation--that is, evidence that indicates, or tends to indicate, that the defendant should be sentenced to life imprisonment without the possibility of parole instead of death. The defendant does not bear a burden of proof in this regard. All the defendant must do is simply present the evidence.
- b. The laws of this State provide that mitigating evidence shall include, but not be limited to, the following enumerated mitigating circumstances: [List appropriate mitigating circumstance(s) found in Appendix C, "Mitigating Circumstances."].
- c. The laws of this State further provide that mitigating circumstances shall not be limited to those I just listed, but shall also include any aspect of the defendant's character or background, any circumstances surrounding the

offense, and any other relevant mitigating evidence that the defendant offers as support for a sentence of life imprisonment without the possibility of parole.

- d. If the factual existence of any evidence offered by the defendant in mitigation is in dispute, the State shall have the burden of disproving the factual existence of the disputed mitigation evidence by a preponderance of the evidence.
 - e. The preponderance-of-the-evidence standard requires the State--in order to negate the existence of disputed mitigating evidence--to offer evidence of greater weight, or evidence that is more convincing, than that offered by the defendant.
 - f. If you believe that the State's offered evidence outweighs, or is more convincing than, the mitigating evidence offered by the defendant, then that mitigating evidence should not be considered in sentencing.
 - g. On the other hand, if you believe that the State's offered evidence is of less or equal weight, or is less convincing, than the mitigating evidence offered by the defendant, then that mitigating evidence shall be considered in sentencing.
 - h. Your determination concerning the existence of mitigating circumstances should not, however, be influenced by passion, prejudice, or any other arbitrary factors. Your determination should be based solely on the evidence presented and the law as I have explained it to you.
6. Special Verdict Form
- a. Before you can reach a verdict of death, each and every one of you must be convinced beyond a reasonable doubt, based on the evidence, that at least one aggravating circumstance exists. If you cannot agree that at least one aggravating circumstance exists, you must return a verdict

of life imprisonment without the possibility of parole. However, if you unanimously find at least one aggravating circumstance to exist beyond a reasonable doubt, you should then proceed to make a determination of death or life imprisonment without the possibility of parole.

- b. Therefore, before you proceed to determine the defendant's sentence, you must answer the following question(s): [Provide the jury with a special verdict form, an example of which is provided below, for each of the proffered aggravating circumstances.].

[Example special verdict form]:

Do you unanimously agree that the State of Alabama has proven beyond a reasonable doubt that the capital offense was [insert applicable circumstance, such as "especially heinous, atrocious, or cruel compared to other offenses"]?

_____ Yes _____ No

_____ Signature of foreperson

If you answer [this question]/[at least one of these questions] yes, you should then proceed to determine whether the sentence shall be death or life imprisonment without the possibility of parole. If you answer [this question]/[all of these questions] no, you shall return a verdict of life imprisonment without the possibility of parole.

7. Reaching a Sentencing Verdict

- a. In determining punishment, you must avoid any influence of passion, prejudice, or any other arbitrary factor. Your deliberation and verdict should be based upon the evidence and testimony you have seen and heard and the law on which I have instructed you.

- b. The process of weighing the aggravating circumstances and the mitigating circumstances against each other in order to determine the proper punishment is not a mathematical process. In other words, you should not merely total the number of aggravating circumstances and compare that number to the total number of mitigating circumstances.
- c. The law of this State recognizes that it is possible, in at least some situations, that one or a few aggravating circumstances might outweigh a larger number of mitigating circumstances. The law of this State also recognizes that it is possible, in at least some situations, that a large number of aggravating circumstances might not outweigh one or a few mitigating circumstances. In other words, the law contemplates that different circumstances may be given different weights or values in determining the sentence in a case, and you, the jury, are to decide what weight or value is to be given to a particular circumstance in determining the sentence in light of all the other circumstances in this case. You must do that in the process of weighing the aggravating circumstances against the mitigating circumstances.
- d. In order to bring back a verdict of death, at least 10 of your number must vote for death. In other words, a verdict of death must be: unanimous; or 11 for death and 1 for life imprisonment without the possibility of parole; or 10 for death and 2 for life imprisonment without the possibility of parole. Any number less than 10 cannot reach a verdict of death.
- e. In order to bring back a verdict of life imprisonment without the possibility of parole, at least seven jurors must vote to impose that sentence. In other words, in order for a verdict to be returned of life imprisonment without the possibility of parole it must be: unanimous; or 11 for life imprisonment without the possibility of parole and 1 for death; or 10 for life

imprisonment without the possibility of parole and 2 for death; or 9 for life imprisonment without the possibility of parole and 3 for death; or 8 for life imprisonment without the possibility of parole and 4 for death; or 7 for life imprisonment without the possibility of parole and 5 for death. Any number less than seven cannot reach a verdict of life imprisonment without the possibility of parole.

- f. In addition to the verdict of either death or life imprisonment without the possibility of parole, your verdict form must contain the numerical vote, not who voted in which way, but the actual count.
- g. Now, ladies and gentlemen, if, after a full and fair consideration of all the evidence in this case and the law as the Court has instructed you, you are convinced beyond a reasonable doubt that at least one aggravating circumstance does exist and you are convinced that the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s), your verdict would be:

We, the jury, determine that the defendant, [insert name of defendant], be sentenced to death. The vote is as follows:

___ # for Death ___ # for Life imprisonment
without the possibility of parole

_____ Signature of foreperson

- h. However, if, after a full and fair consideration of all the evidence and the law as the Court has instructed you, you are not convinced beyond a reasonable doubt that at least one aggravating circumstance exists or that the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s), your verdict would be:

We, the jury, determine that the defendant, [insert name of defendant], be sentenced to life imprisonment without the possibility of parole. The vote is as follows:

____ # for Death ____ # for Life imprisonment
without the possibility of parole

____ Signature of foreperson

VI. DIFFERENT JURY THAN GUILT PHASE AND NO AGGRAVATOR

A. INSTRUCTIONS BEFORE PENALTY PHASE BEGINS

Ladies and gentlemen of the jury, in a separate proceeding the defendant has been found guilty of the capital offense(s) of [list the capital offense(s) defendant was convicted of under Alabama Code 1975, Section 13A-5-40(a)]. In this proceeding, you will not concern yourself with the question of guilt but rather with punishment.

We are now about to begin the penalty-phase proceeding. The duty now before you is to decide the punishment.

The State and the defendant will have the opportunity to present evidence relative to the nature of the crime and the character of the defendant. You are instructed that this evidence is presented in order that you might determine the punishment. At the conclusion of the taking of the evidence and after argument of counsel, you will be instructed further on the law.

B. INSTRUCTIONS AFTER THE TAKING OF EVIDENCE AND THE ARGUMENT OF COUNSEL

1. Duty

Ladies and gentlemen of the jury, it is now your duty to decide the punishment. The law of this State provides that the punishment for the capital offense(s) of [list the capital offense(s) defendant was convicted of under Alabama Code 1975, Section 13A-5-40(a)], for which this defendant has been convicted, is either death or life imprisonment without the possibility of parole. The law also

provides that the punishment that should be imposed upon the defendant depends on whether any aggravating circumstances exist beyond a reasonable doubt and, if so, whether the aggravating circumstances outweigh the mitigating circumstances.

2. Aggravating and Mitigating Circumstances

However, the State has not offered any evidence of an aggravating circumstance. Therefore, as a matter of law, the sentence shall be life imprisonment without parole.

3. Evidence and Law

Your verdict should be based upon the evidence that has been presented to you in these proceedings, as well as the law on which I am instructing you. It should not be influenced by passion, prejudice, or any other arbitrary factor.

4. Sentencing Verdict

- a. Because no aggravating circumstance exists, you must return a verdict of life imprisonment without the possibility of parole.
- b. The law requires the jury to return a verdict even though you have only one option. In order to bring back a verdict of life imprisonment without the possibility of parole, at least seven jurors must vote to impose that sentence. Any number less than seven cannot reach a verdict of life imprisonment without the possibility of parole.
- c. In addition to the verdict of life imprisonment without the possibility of parole, your verdict form must contain the numerical vote, not who voted in which way, but the actual count.
- d. Now, ladies and gentlemen, after a full and fair consideration of all the evidence in this case and in accordance with the law as the Court has instructed you, your verdict must be:

We, the jury, determine that the defendant,
[insert name of defendant], be sentenced to life
imprisonment without the possibility of parole.
The vote is as follows:

___# for Life imprisonment without the
possibility of parole.

_____ Signature of foreperson

APPENDIX A

Capital Offenses Containing an Aggravating Circumstance Established by the Guilt-Phase Verdict

Ala. Code 1975, §§ 13A-5-40(a)(1), 13A-5-49(4), and 13A-5-50

MURDER DURING KIDNAPPING IN THE FIRST DEGREE (OR ATTEMPT THEREOF) --NECESSARY AGGRAVATING CIRCUMSTANCES

The defendant has been convicted of capital murder. Namely, murder during a kidnapping in the first degree (or an attempt thereof).

This offense necessarily includes as an element the following aggravating circumstance as provided by the law of this State:

The capital offense was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit, a kidnapping.

By law, the verdict in the guilt phase finding the defendant guilty of this capital offense established the existence of this aggravating circumstance beyond a reasonable doubt. This aggravating circumstance is included in the list of enumerated statutory aggravating circumstances permitting you to consider death as an available punishment. This aggravating circumstance, therefore, shall be considered by you in deciding whether the sentence shall be death or life imprisonment without the possibility of parole.

Ala. Code 1975, §§ 13A-5-40 (a) (2), 13A-5-49 (4), and 13A-5-50

**MURDER DURING ROBBERY IN THE FIRST DEGREE (OR ATTEMPT THEREOF)
--NECESSARY AGGRAVATING CIRCUMSTANCES**

The defendant has been convicted of capital murder. Namely, murder during a robbery in the first degree (or an attempt thereof).

This offense necessarily includes as an element the following aggravating circumstance as provided by the law of this State:

The capital offense was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit, a robbery.

By law, the verdict in the guilt phase finding the defendant guilty of this capital offense established the existence of this aggravating circumstance beyond a reasonable doubt. This aggravating circumstance is included in the list of enumerated statutory aggravating circumstances permitting you to consider death as an available punishment. This aggravating circumstance, therefore, shall be considered by you in deciding whether the sentence shall be death or life imprisonment without the possibility of parole.

Ala. Code 1975, §§ 13A-5-40(a)(3), 13A-5-49(4), and 13A-5-50

MURDER DURING RAPE IN THE FIRST OR SECOND DEGREE (OR ATTEMPT THEREOF) --NECESSARY AGGRAVATING CIRCUMSTANCES

The defendant has been convicted of capital murder. Namely, murder during a rape in the first or second degree (or an attempt thereof).

This offense necessarily includes as an element the following aggravating circumstance as provided by the law of this State:

The capital offense was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit, a rape.

By law, the verdict in the guilt phase finding the defendant guilty of this capital offense established the existence of this aggravating circumstance beyond a reasonable doubt. This aggravating circumstance is included in the list of enumerated statutory aggravating circumstances permitting you to consider death as an available punishment. This aggravating circumstance, therefore, shall be considered by you in deciding whether the sentence shall be death or life imprisonment without the possibility of parole.

Ala. Code 1975, §§ 13A-5-40(a)(4), 13A-5-49(4), and 13A-5-50

MURDER DURING BURGLARY IN THE FIRST OR SECOND DEGREE (OR ATTEMPT THEREOF) -- NECESSARY AGGRAVATING CIRCUMSTANCES

The defendant has been convicted of capital murder. Namely, murder during a burglary in the first or second degree (or an attempt thereof).

This offense necessarily includes as an element the following aggravating circumstance as provided by the law of this State:

The capital offense was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit, a burglary.

By law, the verdict in the guilt phase finding the defendant guilty of this capital offense established the existence of this aggravating circumstance beyond a reasonable doubt. This aggravating circumstance is included in the list of enumerated statutory aggravating circumstances permitting you to consider death as an available punishment. This aggravating circumstance, therefore, shall be considered by you in deciding whether the sentence shall be death or life imprisonment without the possibility of parole.

Ala. Code 1975, §§ 13A-5-40(a)(6), 13A-5-49(1), and 13A-5-50

**MURDER COMMITTED WHILE UNDER SENTENCE OF IMPRISONMENT--
NECESSARY AGGRAVATING CIRCUMSTANCES**

The defendant has been convicted of capital murder. Namely, murder committed while the defendant was under a sentence of imprisonment.

This offense necessarily includes as an element the following aggravating circumstance as provided by the law of this State:

The capital offense was committed by a person under sentence of imprisonment.

By law, the verdict in the guilt phase finding the defendant guilty of this capital offense established the existence of this aggravating circumstance beyond a reasonable doubt. This aggravating circumstance is included in the list of enumerated statutory aggravating circumstances permitting you to consider death as an available punishment. This aggravating circumstance, therefore, shall be considered by you in deciding whether the sentence shall be death or life imprisonment without the possibility of parole.

Use Note

This offense may include the aggravating circumstance that the defendant was previously convicted of another capital offense or a felony involving the use or threat of violence to the person [§ 13A-5-49(2)]. It will be necessary to determine why the defendant had previously been imprisoned in order to add this circumstance to the instruction. The existence of that aggravating circumstance will be determined by the facts of the particular case as would the existence of other necessary aggravating circumstances.

Ala. Code 1975, §§ 13A-5-40(a)(10), 13A-5-49(9), and 13A-5-50

MURDER OF TWO OR MORE PERSONS PURSUANT TO ONE SCHEME OR COURSE OF CONDUCT--NECESSARY AGGRAVATING CIRCUMSTANCES

The defendant has been convicted of capital murder. Namely, the murder of two or more persons by one act or pursuant to one scheme or course of conduct.

This offense necessarily includes as an element the following aggravating circumstance as provided by the law of this State:

The defendant intentionally caused the death of two or more persons by one act or pursuant to one scheme or course of conduct.

By law, the verdict in the guilt phase finding the defendant guilty of this capital offense established the existence of this aggravating circumstance beyond a reasonable doubt. This aggravating circumstance is included in the list of enumerated statutory aggravating circumstances permitting you to consider death as an available punishment. This aggravating circumstance, therefore, shall be considered by you in deciding whether the sentence shall be death or life imprisonment without the possibility of parole.

Use Note

This offense may include the aggravating circumstance that the capital offense was one of a series of intentional killings committed by the defendant [§ 13A-5-49(10)]. The existence of that aggravating circumstance will be determined by the facts of the particular case as would the existence of other necessary aggravating circumstances. Both of these aggravating circumstances, however, apply only to cases where the crime occurred after September 1, 1999.

Ala. Code 1975, §§ 13A-5-40 (a) (13), 13A-5-49 (2), and 13A-5-50

**MURDER WITHIN 20 YEARS OF A PREVIOUS MURDER CONVICTION--
NECESSARY AGGRAVATING CIRCUMSTANCES**

The defendant has been convicted of capital murder. Namely, murder within 20 years of a previous murder conviction.

This offense necessarily includes as an element the following aggravating circumstance as provided by the law of this State:

The defendant was previously convicted of another capital offense or a felony involving the use or threat of violence to the person.

By law, the verdict in the guilt phase finding the defendant guilty of this capital offense established the existence of this aggravating circumstance beyond a reasonable doubt. This aggravating circumstance is included in the list of enumerated statutory aggravating circumstances permitting you to consider death as an available punishment. This aggravating circumstance, therefore, shall be considered by you in deciding whether the sentence shall be death or life imprisonment without the possibility of parole.

Use Note

This offense may also include the aggravating circumstance that the capital offense was committed by a person under sentence of imprisonment [§ 13A-5-49(1)]. The existence of that aggravating circumstance will be determined by the facts of the particular case as would the existence of other necessary aggravating circumstances.

APPENDIX B

Aggravating Circumstances

Ala. Code 1975, §§ 13A-5-49 and 13A-5-50

AGGRAVATING CIRCUMSTANCES

The laws of this State provide that the following shall constitute aggravating circumstances for the jury's consideration during the sentencing phase of trial. [Instruct the jury only on the aggravating circumstances offered by the State in the sentencing phase.]

- (1) The capital offense was committed by a person under sentence of imprisonment.

"Under sentence of imprisonment" means while serving a term of imprisonment, while under a suspended sentence, while on probation or parole, or while on work release, furlough, escape, or any other type of release or freedom, while or after serving a term of imprisonment, other than unconditioned release and freedom after expiration of term of sentence.

- (2) The defendant was previously convicted of another capital offense or a felony involving the use or threat of violence to the person.

[Whether a particular crime is a "capital offense" or a "felony involving the use or threat of violence to the person" is a question of law on which the jury should be instructed. Therefore, when the State offers evidence under this aggravating circumstance, the court should also instruct the jury of the following, as applicable:]

- (a) The crime of [previous crime] is a capital offense;
 - (b) The crime of [previous crime] is a felony involving the [use] [threat] of violence to the person.
- (3) The defendant knowingly created a great risk of death to many persons.

- (4) The capital offense was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit, [rape,] [robbery,] [burglary,] or [kidnapping].

[Only the felony relevant to the facts of the given case should be read to the jury. If the jury was not instructed on the elements of that felony in the guilt phase of trial, it should be done at this time.]

- (5) The capital offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- (6) The capital offense was committed for pecuniary gain.
- (7) The capital offense was committed to disrupt or hinder the lawful exercise of any function or the enforcement of laws.
- (8) The capital offense was especially heinous, atrocious, or cruel compared to other capital offenses.

The term "heinous" means extremely wicked or shockingly evil. The term "atrocious" means outrageously wicked or violent. The term "cruel" means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others.

[What is intended to be included in this aggravating circumstance is those cases where the actual commission of the capital offense is accompanied by such additional acts as to set the crime apart from the norm of capital offenses.]

For a capital offense to be especially heinous or atrocious, any brutality that is involved in it must exceed that which is normally present in any capital offense.

For a capital offense to be especially cruel, it must be a pitiless crime that is unnecessarily torturous to the victim, either physically or psychologically.

All capital offenses are heinous, atrocious, and cruel to some extent. What is intended to be covered by this aggravating circumstance is only those cases in which the degree of heinousness, atrociousness, or cruelty exceeds that which will always exist when a capital offense is committed.

- (9) The defendant intentionally caused the death of two or more persons by one act or pursuant to one scheme or course of conduct.
- (10) The capital offense was one of a series of intentional killings caused by the defendant.

APPENDIX C

Mitigating Circumstances

Ala. Code 1975, § 13A-5-51

MITIGATING CIRCUMSTANCES

The laws of this State provide that mitigating circumstances shall include, but not be limited to, the following:

- (1) The defendant has no significant history of prior criminal activity.
- (2) The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- (3) The victim was a participant in the defendant's conduct or consented to it.
- (4) The defendant was an accomplice in the capital offense committed by another person and his/her participation was relatively minor.
- (5) The defendant acted under extreme duress or under the substantial domination of another person.

"Duress" means subjecting a person to improper pressure that overcomes his/her will and coerces him/her to comply with a demand to which he/she would not have yielded if he/she were acting as a free agent.

- (6) The capacity of the defendant to appreciate the criminality of his/her conduct or to conform his/her conduct to the requirements of law was substantially impaired.

A person's capacity to appreciate the criminality of his/her conduct or to conform his/her conduct to the requirements of law is not the same as his/her ability to know right from wrong generally, or to know what he/she is doing at a given time, or to know that what he/she is doing is wrong. A person may

indeed know that doing the act that constitutes a capital offense is wrong and still not appreciate its wrongfulness because he/she does not fully comprehend or is not fully sensible to what he/she is doing or how wrong it is. Further, for this mitigating circumstance to exist, the defendant's capacity to appreciate does not have to have been totally obliterated. It is enough that it was substantially lessened or substantially diminished. Finally, this mitigating circumstance would exist even if the defendant did appreciate the criminality of his/her conduct if his/her capacity to conform to the law was substantially impaired, because a person may appreciate that his/her actions are wrong and still lack the capacity to refrain from doing them.

(7) The age of the defendant at the time of the crime.

[Give the following if the defendant offers any nonstatutory mitigating circumstance(s):]

Mitigating circumstances shall also include any aspect of a defendant's character or record or any of the circumstances of the offense that the defendant offers as a basis for a sentence of life imprisonment without the possibility of parole instead of death, and any other relevant mitigating circumstance that the defendant offers as a basis for a sentence of life imprisonment without the possibility of parole instead of death, such as [list the nonstatutory mitigating circumstance(s) offered by the defendant].

IN THE SUPREME COURT OF ALABAMA
October 5, 2018

ORDER

IT IS ORDERED that Rule II, Rule III, Rule IV, Rule V, Rule VI(B), and the Appendix, Rules Governing Admission to the Alabama State Bar, be amended to read in accordance with Appendices A, B, C, D, E, and F, respectively, to this order;

IT IS FURTHER ORDERED that these amendments are effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule II, Rule III, Rule IV, Rule V, Rule VI(B), and the Appendix:


"Note from the reporter of decisions: The order amending Rule II, Rule III, Rule IV, Rule V, Rule VI(B), and Appendix, effective October 5, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So. 3d."

Stuart, C.J., and Bolin, Shaw, Main, Bryan, Sellers, and Mendheim, JJ., concur.

Parker, J., concurs as to Rule II, Rule V, Rule VI(B), and the Appendix and dissents as to Rule III and Rule IV.

Wise, J., concurs as to Rule II, Rule III, Rule IV, Rule VI(B), and the Appendix and dissents as to Rule V.

Witness my hand this 5th day of October, 2018.



Clerk, Supreme Court of Alabama

FILED October 5, 2018 8:27 am Clerk Supreme Court of Alabama
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APPENDIX A

Rule II. Application for Admission to the Alabama State Bar

A. Applications. Applications for admission to the Alabama State Bar, whether filed as a registrant under Rule I or as an applicant under this rule, are continuing in nature and must give the information sought correctly and fully as of the date that the applicant is sworn in as a member of the Alabama State Bar. To that end, every applicant or registrant shall immediately inform the Secretary of any change or discovered error in the requested information that may occur between the time that information is furnished to the Alabama State Bar and the date of the applicant's admission.

The Board may require that all the information furnished be given under oath.

As a condition for admission into the bar examination, every applicant shall state under oath when filing an application for admission that all information in every application and in all amendments thereto previously submitted is true and complete.

B. Residency Requirements.

(1) Applicants who have neither applied nor been admitted to the bar of any other jurisdiction shall pay the amount prescribed in item (1) of the Fee Schedule (see Appendix).

(2) All other applicants, unless otherwise provided for by these Rules, shall pay the amount prescribed in item (2) of the Fee Schedule (see Appendix).

Each applicant who qualifies under this subsection shall be required to undergo a separate character and fitness investigation conducted by the National Conference of Bar Examiners (NCBE) and to pay the costs associated therewith.

(3) The cost of a transcript or any record or document reasonably required by the Board in the conduct of an investigation or inquiry into the character and fitness of an applicant or a registrant shall be paid by such applicant or registrant.

C. Filing Deadlines.

(1) All applicants for admission by examination shall electronically submit their completed applications not later than October 1 preceding the February examination and not later than February 1 preceding the July examination.

(2) The Alabama State Bar will acknowledge receipt of all applications filed on or before the deadlines prescribed in subsection (1) of this section. Included in this acknowledgment will be the deadline for receipt of any paper components of the application that must be submitted in original hard-copy format.

(3) Any paper components of the application are deemed timely filed if they are (a) received on or before the deadline given in accordance with subsection (2) of this section or (b) postmarked on or before the deadline given in accordance with subsection (2) of this section and received with seven (7) days of the postmark date.

D. Supporting Affidavits. In support of said application the applicant shall cause to be sent directly to the Secretary affidavits by three attorneys in good standing who have for five years been admitted to practice law. These affidavits must be to the effect that each affiant is acquainted with the applicant and should state the extent and duration of the association, the frequency of contact, the opportunity of observing and knowing the demeanor, habits, character, associates of and conduct of the applicant, the type of such associates, and generally the background, standing and position in life of the applicant, and that the applicant has a good character and reputation where the applicant resides and enjoys the confidence and respect of the general public. Each such affidavit shall state whether the affiant's appraisal of the applicant is based upon personal knowledge or upon inquiry.

E. Reexamination. Every applicant who is qualified and desires to repeat any part of the academic portion (see Rule VI(B)) of the bar examination shall file a Reapplication for Admission to the Alabama State Bar. The reapplication shall be accompanied by the amount prescribed in item (3) of the Fee Schedule (see Appendix). The reapplication shall be filed in the office of the Secretary within the deadlines as specified under the provisions of this rule as they pertain to the

examination such applicant desires to take. In those instances where the running of the deadline under this rule occurs before notification is given of the failure of any part of the examination, thus precluding compliance with the deadline by unsuccessful examinees, the deadline shall extend for a period of 10 days from the date of the release of results of the examination.

F. Postponement of Examination. Applicants seeking to postpone their submission to the Alabama State Bar examination shall be permitted to do so upon payment of a fee of \$100.00 to the Alabama State Bar. A written notice of postponement and the \$100.00 fee must be received by the Alabama State Bar at least seven days in advance of the commencement of the examination.

Any applicant who has not made an appropriate postponement at least seven days in advance of the commencement of the examination shall be deemed to have forfeited the entire examination fee if the applicant fails to take the examination for which application has been made.

Any postponement made in accordance with the provisions of this section shall be effective only until the examination immediately following the examination from which the applicant is postponing. All applicants who have postponed their submission to examination may file a reapplication for the next examination. Any applicant who has postponed his or her submission to examination and who does not reapply and sit for the examination immediately following the postponed examination shall be deemed to have forfeited the entire examination fee.

G. Application Fees Nonrefundable. Any fee required with an application filed pursuant to these Rules shall be nonrefundable.

APPENDIX B

Rule III. Persons Entitled to Admission Without Examination

A. Reciprocity. No person shall be admitted to the Alabama State Bar without examination except as follows:

(1) An applicant who meets the requirements of paragraphs (a) through (k) of this rule may, without examination, be admitted to the practice of law in Alabama. The applicant shall

(a) have been admitted to practice law in another state, territory, or the District of Columbia;

(b) hold a first professional degree of law (J.D. or L.L.B.) from a law school that was on the approved list of the American Bar Association at the time the degree was conferred;

(c) have been primarily engaged in the active practice of law in one or more states, territories, or the District of Columbia for five of the six years immediately preceding the date upon which the application is filed;

(d) establish that the state, territory, or the District of Columbia in which the applicant has or had his or her principal place of business for the practice of law, or in which he or she was or is domiciled and admitted before seeking admission here, would allow attorneys from Alabama a similar accommodation as set forth in this rule;

(e) establish that the applicant is currently a member in good standing in all jurisdictions where he or she is admitted;

(f) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(g) establish that the applicant possesses the character and fitness to practice law as determined by the Committee on Character and Fitness under Rule V of these Rules;

(h) establish that the applicant has not, within the 10 years prior to making application, taken and failed the Alabama Bar examination;

(i) be a permanent resident of the State of Alabama at the time of application or certify his or her intention to conduct the primary practice of law in Alabama and to maintain an office for the practice of law in this State. The "primary practice of law" shall mean at least 75% of the time devoted to the practice of law will be conducted in this State;

(j) have taken and achieved a score of 75 or better on the Multistate Professional Responsibility Examination (MPRE); and

(k) have complied with the requirements of Rule I and paid the fee prescribed in item (4) of the Fee Schedule (see Appendix).

(2) For the purposes of this rule, the "active practice of law" under paragraph A(1)(c) shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice; however, in no event shall activities listed under paragraphs A(2)(e) and (f) that were performed within Alabama in advance of Bar admission here be accepted toward the durational requirement:

(a) Representation of one or more clients in the practice of law;

(b) Service as a lawyer with a local, state, territorial, or federal agency, including military service;

(c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;

(d) Service as a judge in a federal, state, territorial, or local court of record;

(e) Service as a judicial law clerk; or

(f) Service as corporate counsel.

(3) For the purposes of this rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

(4) Teachers in a law school situated in this State and accredited by the American Bar Association, who have been full-time teachers at said law school for a period of not less than three consecutive calendar years prior to the date of their application and who satisfy the requirements of paragraphs A(1)(a), (b), and (d)-(k) may be admitted to the practice of law in Alabama. All such applicants shall give proof of the qualifications prescribed herein, which shall be certified to by the dean of the law school at which they teach.

(5) If the applicant is found to satisfy all the requirements of this rule, the Secretary shall certify such fact to the Board of Commissioners and to the clerk of the Alabama Supreme Court.

B. Application and Fees. The Secretary is authorized and empowered to prepare the necessary forms of application and affidavits to effectuate the purpose of this rule. Those who seek admission under provisions of this rule must make application for admission to practice law, as other applicants are required to do by these Rules and any associated regulations. Any fee required with an application filed pursuant to this rule shall be nonrefundable.

APPENDIX C

Rule IV. Persons Entitled to Admission by Examination

A. General Requirements. Any person who is at least 19 years of age and who has complied with the requirements of Rule I is entitled to be examined for admission to the Alabama State Bar, at any examination held as prescribed by these Rules, upon proof that he or she has complied with the education requirements set out in this rule.

B. Education Requirements.

(1) Proof of Prelegal Education.

(a) An applicant who has graduated from a law school that was not on the approved list of the American Bar Association at the time of the applicant's graduation shall give proof that he or she has met the following prelegal education requirements:

(i) that the applicant has received a baccalaureate degree from a university or college that, at the time of the applicant's graduation, appeared on the approved list of any accrediting agency recognized by the United States Department of Education, or that meets substantially the same standards required for appearing on the approved list of such agency; and

(ii) that the degree was received before the applicant entered law school.

(b) An applicant who has graduated from a law school that was on the approved list of the American Bar Association at the time of the applicant's graduation shall not be required to give proof that he or she has met the prelegal education requirements set out in paragraph (a), unless such proof is required by the Committee on Character and Fitness.

(c) An applicant who has graduated from a program awarding a law degree at a university or college that, at the time of the applicant's graduation, was located outside the United States and its territories shall not be required to give proof that he or she has met the

prelegal education requirements set out in paragraph (a) of this subsection.

(2) Proof of Legal Education. An applicant shall make proof of legal study by filing with the Secretary a certificate or certificates from the dean or deans of one or more law schools, from which it shall appear that the applicant has completed legal study conforming to and fulfilling the following requirements:

(a) That the applicant has pursued and satisfactorily completed, as a resident student in a law school or law schools, a course of law studies that extended for at least 3 academic years of at least 30 weeks each; that the applicant has graduated from such a law school; and that at the time of the applicant's graduation the school from which the applicant graduated was approved by the American Bar Association; or

(b) That the applicant has pursued and satisfactorily completed, as a resident student at Birmingham School of Law, Jones School of Law of Faulkner University before June 11, 2006, the date on which Jones School of Law was provisionally accredited by the American Bar Association, or Miles College of Law, (1) a course of law studies that extended for at least 4 academic years of at least 30 weeks each or (2) a course of full-time law studies that extended for at least 3 academic years of at least 30 weeks each; that the applicant has graduated from one of these law schools; and that at the time of the applicant's graduation the school has been continuously located and has remained in continuous operation in the county in which it was operating on August 30, 1995.

For purposes of determining whether a student is engaged in "full-time law studies" so as to be able to complete those studies in 3 academic years of at least 30 weeks each the following shall apply:

(i) An academic year shall consist of not fewer than 130 class days, which days shall extend into no fewer than 8 calendar months. A class day is a day on which classes are regularly scheduled throughout the day. Time for reading periods, examinations, or other activities may not be counted for purposes of

meeting this 130-class-day requirement. A day on which classes are not scheduled throughout the day is not a "class day" for purposes of determining whether a student is engaged in "full-time law studies."

(ii) The law school shall require, as a condition for graduation, the successful completion of a course of study in residence of not fewer than 56,000 minutes of instruction time, including external study, e.g., externships, extending over not fewer than 6 academic semesters. To achieve the required 56,000 minutes of instruction time the law school must require at least 80 semester hours of credit. A semester hour of credit requires not less than 700 minutes of instruction time, exclusive of time scheduled for administering examinations. The 130-class-day requirement set out in subparagraph (b)(i) above and the 56,000-minutes requirement established in this subparagraph shall be interpreted and applied as separate and independent requirements.

(iii) The law school shall require that a student pursuing full-time law studies be enrolled for at least 10 semester hours of credit, and in each semester the student must receive credit for 9 hours in order to be considered a student pursuing full-time law studies.

(iv) The law school may permit a student pursuing full-time law studies to graduate in fewer than six academic semesters by earning not more than one semester of credit hours by taking courses offered by the law school during a summer session, provided the student meets the class-hour requirements; or

(c) That the applicant has pursued and satisfactorily completed as a resident student at a law school located outside the State of Alabama, but within the United States or one of its territories, that, as of the date of the applicant's graduation, had not been approved by the American Bar Association, a course of law studies that extended for at least 4 academic years of at least 30 weeks each, and is a graduate of that law

school; that the applicant has been admitted to the practice of law before the court of highest jurisdiction in the state or other jurisdiction in which that law school is located; that the applicant has, after the applicant's admission to practice law before the court of highest jurisdiction in that state or other jurisdiction, been continuously engaged in the active practice of law for at least 5 years; and that the applicant is a member in good standing of the bar of that court of highest jurisdiction; provided, however, that an applicant may qualify under this paragraph (c) only if the state or other jurisdiction in which is located the law school from which the applicant graduated extends comity to graduates of Birmingham School of Law and Miles College of Law and to graduates of Jones School of Law of Faulkner University before June 11, 2006, who seek admission to the bar of that state or jurisdiction, and graduates of those schools are permitted to seek admission to the bar of that state or jurisdiction on terms and conditions no more onerous than those imposed on the applicant by this paragraph (c); or

(d) That the applicant has pursued and satisfactorily completed a law-degree program of a university or college that, at the time of the applicant's graduation, was located outside the United States and its territories and was approved in that foreign jurisdiction and that the applicant has been admitted to the practice of law in the jurisdiction in which that university or college is located and (i) that the law-degree program completed by the applicant includes a substantial component of the study of English common law; or (ii) that the applicant has satisfactorily completed at least 24 semester hours of legal studies in subjects covered by the bar examination in regular law-school classes, under the same standards and conditions as are applied to other students, at a law school that was then on the approved list of the American Bar Association; or (iii) that the applicant has been admitted to the practice of law before the court of highest jurisdiction in a state or other jurisdiction within the United States, that the applicant has, after such admission, been continuously engaged in the active practice of law for at least 3 years in a state or other jurisdiction within the United States, and that the applicant is a member in good standing of the bar of that

court of highest jurisdiction.

C. Certification of Eligibility.

If the applicant is entitled to take the examination, the Secretary shall issue to such applicant a certificate substantially as follows:

The Board of Commissioners of the Alabama State Bar does hereby certify that _____, who has satisfied the applicable requirements of the Rules Governing Admission to the Alabama State Bar, is entitled to take the examination for admission to the Alabama State Bar to be administered on _____ at _____.

BY: _____
Secretary, Board of Commissioners
Alabama State Bar

Such certification shall be presented and verified before such applicant enters upon the examination, and the Board of Bar Examiners shall not examine any applicant by whom such certificate has not been presented and verified. The Secretary, upon issuing or refusing to issue the said certificate, shall preserve in his or her office a record of the fact that such certificate was or was not issued and the date of such action, and shall preserve in his or her office said application with the papers attached thereto, and other records in connection with the said application, all of which shall be kept on file until the examination is completed, report made thereon, and pending application finally disposed of. If an applicant is not admitted to the practice of law, the application and all other papers in connection therewith shall be kept on file in the Secretary's office for reference in connection with any future application for admission to the Bar, or for investigation and examination of the record by any person entitled thereto.

D. Limitation on Examinations. The number of times an applicant may be examined for admission to the Alabama State Bar shall be unlimited.

APPENDIX D

Rule V. Committee on Character and Fitness

A. Establishment of Committee. For the purpose of determining the fitness, character, and qualifications of applicants who desire to be admitted to the practice of law in the State of Alabama there is hereby created the Committee on Character and Fitness of the Alabama State Bar. The Committee on Character and Fitness may be divided into as many panels as may be necessary to carry out the duties of the Committee. Each panel of the Committee on Character and Fitness shall be composed of three lawyers appointed by the president of the Alabama State Bar and shall be known as a "Committee on Character and Fitness."

B. Duties of Committee. The Committee on Character and Fitness is hereby charged with the power, duty, and responsibility of determining the age, the character and fitness, and the educational qualifications of each applicant for admission to the Bar of Alabama. To that end, the Committee may make such investigation as it sees fit, may require the production before it of any affidavits deemed by it to have any bearing upon these questions, and may require the applicant to appear in person before it and be by it examined. The vote of a majority of the members of a Committee on Character and Fitness, if in meeting assembled, shall constitute the action of the Committee.

The burden is on the applicant to establish to the reasonable satisfaction of a majority of the Committee on Character and Fitness that the applicant possesses such character and qualifications as to justify the applicant's admission to the Bar and to qualify the applicant to perform the duties of an attorney and counselor at law. The failure of the applicant to fully and accurately comply with any request to produce documents or to appear personally before the Committee, or to fully and accurately provide such other information as reasonably may be requested by the Committee, shall be a sufficient ground to deny approval of the application.

When, but not until, a majority of the Committee is reasonably satisfied as to the applicant's character and fitness, and that the applicant is of the proper age and possesses the educational qualifications now or hereafter

prescribed as provided by law, the Committee shall endorse its approval on the application, and the application and all papers accompanying it shall remain on file in the Secretary's office.

If an applicant for admission by examination has passed the Academic Bar Examination and is required to appear in person before the Committee on Character and Fitness, the Committee shall hold a hearing on the application no later than 60 days after the release of the results of the examination, unless otherwise stipulated to by the applicant and the Committee. If the Committee declines to approve an application for admission, it shall hold a rehearing on the application, the date of which shall not be more than 180 days after the date of denial, unless otherwise stipulated to by the applicant and the Committee. A rehearing shall not be required if the applicant prevails on appeal or if an appeal is pending in accordance with these Rules. Notwithstanding any other provision of these Rules, any applicant for admission by examination must receive approval of the Committee on Character and Fitness within 25 months from the date of the passed Academic Bar Examination.

An applicant for admission by examination who has received approval of the Committee on Character and Fitness, whether or not the applicant appeared in person before the Committee, and who fails or withdraws from an Academic Bar Examination must submit an application for any subsequent examination in accordance with these Rules.

From a ruling of the Committee on Character and Fitness declining to approve the application for registration as a law student or declining to approve the application for admission to the State Bar or making any finding or ruling adverse to any applicant, an appeal shall lie to the Disciplinary Board of the Alabama State Bar (which, when acting in such capacity, shall be referred to as the "Character and Fitness Appeal Board"), if notice of appeal is filed with the Secretary within 30 days after the applicant has been notified of the action of the Committee. Such appeal shall be heard, de novo, within 30 days after the filing of the notice of appeal or at such time as agreed upon by stipulation between the appellant and the General Counsel of the Alabama State Bar. An appeal from a ruling of the Character and Fitness Appeal Board to the Supreme Court of Alabama shall be perfected by filing a notice of appeal with the clerk of the Supreme Court of Alabama

within 30 days after the decision of the Character and Fitness Appeal Board. The record on appeal shall be prepared in accordance with the provisions of Rule 12(f), Rules of Disciplinary Procedure of the Alabama State Bar.

The members of the Committee on Character and Fitness may separately and without assembling in meeting consider any application that is required by these Rules to be submitted to such Committee, together with the data submitted in support of such application, and may endorse upon such application their approval or disapproval thereof; unanimous action of all the members of the Committee, so taken, shall constitute valid action of the Committee, but if such action is not unanimous, the Committee, or a majority thereof, shall further consider and act upon such application in a meeting assembled.

If an applicant for admission by examination has passed the Academic Bar Examination but has not received approval of the Committee on Character and Fitness, he or she shall have a period of 25 months from the date of the passed Academic Bar Examination in which to receive such approval.

C. Determination of Committee and Disposition of Fees. Notwithstanding any other provision of these Rules, an applicant whose application is denied by the Committee on Character and Fitness and who does not prevail on rehearing or appeal of such denial shall forfeit all fees paid in conjunction with the filing of said application.

APPENDIX E

Rule VI(B). Bar Examination

A. Bar Examination Subjects.

(1) Academic Bar Examination. The Academic Bar Examination shall consist of the Uniform Bar Examination ("the UBE"). The UBE is prepared by the National Conference of Bar Examiners and includes the Multistate Essay Examination ("the MEE"), the Multistate Performance Test ("the MPT"), and the Multistate Bar Examination ("the MBE").

(2) Legal Ethics Examination. The Multistate Professional Responsibility Examination ("the MPRE," see Rule VI(B)E) prepared by the National Conference of Bar Examiners shall be used as the examination on Legal Ethics and Professional Responsibility.

An applicant must pass both the Academic Bar Examination and the Legal Ethics Examination to be certified as a successful candidate.

(3) Course on Alabama Law. Before being admitted to the practice of law in Alabama, all applicants shall complete a course on Alabama law, the content and delivery of which shall be determined by the Board of Bar Examiners.

B. Preparing, Conducting, and Grading Examinations.

(1) Preparing Examinations. The MBE, the MEE, and the MPT will be prepared by the National Conference of Bar Examiners, which shall determine the contents of those examinations and test.

(2) Conducting Examinations. The Board of Bar Examiners shall have the right, power, and authority to adopt rules consistent with the laws of the State of Alabama or orders of the Supreme Court or the Board of Bar Commissioners governing the control, methods, and details of conducting examinations.

The Secretary of the Alabama State Bar, at the time an applicant is certified to the Board of Bar Examiners under these Rules, shall issue to the applicant a card containing a personal-identification number, the purpose and use of which shall be carefully explained to the applicant. The Secretary

shall preserve a duplicate of that number in the Secretary's office. When taking the MEE and the MPT, the applicant may not sign his or her name to or upon any paper or documents, or identify his or her examination answers other than by that number or by such method as is required by the National Conference of Bar Examiners to identify UBE scores, and is forbidden to disclose that number to any member of the Board or to any other person. If any applicant violates this requirement in any particular, the Board of Bar Examiners shall not consider the applicant's examination papers, and if it be discovered that disclosure of the number was made, the applicant shall be subject to disciplinary action for deceit and misrepresentation. This requirement shall again be called to the attention of the applicant by the Board of Bar Examiners before the applicant is permitted to begin the examination.

The express purpose of the immediately preceding paragraph is to provide a method by which the Board of Bar Examiners, in passing upon the sufficiency of answers to questions propounded by it, shall be unacquainted with the identity of the person whose answers it is passing upon.

(3) Grading Examinations. MEE and MPT questions will test the applicant's ability to reason logically, to analyze legal problems accurately, to demonstrate a knowledge of the fundamental principles of law, to be able to apply those principles, and to perform basic legal tasks. The grade of the paper shall be measured by the reasoning power shown as well as by the correctness or incorrectness of the answers. Answers to MEE questions shall be analyzed and graded using the model answers provided by the National Conference of Bar Examiners and according to general principles of law. MEE and MPT questions will be scored by the Board of Bar Examiners.

Using the personal-identification numbers assigned to identify the respective applicants, the Board of Bar Examiners shall certify final grades to the Secretary of the Alabama State Bar no later than April 15 following a February examination and September 15 following a July examination.

The Secretary shall make a permanent record in the Secretary's office of the grades attained by each examinee in each subject and shall inform each examinee whether he or she has passed or failed the examination.

Each examinee will be furnished the following information at the time examination results are released: his or her MBE scaled score, total scaled score on written examinations (MEE and MPT), total UBE scaled score, and the raw score on each question on the MEE and the MPT.

Within 60 days after the announcement of the results, a failing examinee shall be entitled to examine his or her own papers in the State Bar headquarters for the purpose of ascertaining that grades were transcribed correctly, and, upon payment of \$5.00 per section of the MEE or the MPT, the examinee shall be entitled to receive a copy of his or her answer or answers. The UBE questions and model answers are protected by copyright owned by the National Conference of Bar Examiners, and examinees should contact the National Conference of Bar Examiners to obtain copies of those.

C. Results of Examinations.

(1) Basic Rule. Raw scores on the MEE and the MPT portions of the UBE shall be weighted so that the MEE is worth 30% and the MPT is worth 20%. The total weighted raw score on the MEE and the MPT combined shall be scaled to the MBE. The applicant's scaled score on the MEE and the MPT portions of the UBE shall be expressed on the MBE range of scores (0-200) and shall be combined and weighted equally with the applicant's scaled MBE score to determine the examinee's total UBE scaled score. An examinee who achieves a total UBE score of 260 or above passes the Academic Bar Examination.

(2) Transfer of MBE Score. An applicant who has taken and passed a bar examination in another jurisdiction, who has been admitted to practice in that jurisdiction, and who made an MBE scaled score 140 or above in that jurisdiction may be excused from taking the MBE. The transferred MBE score will be valid for a period of 25 months after taking the MBE on which the transferred score was received. The applicant's transferred MBE score will be combined with the applicant's scaled scores on the MEE and the MPT portions of the UBE according to the basic rule. Applicants who transfer an MBE score to seek admission in Alabama will not earn a transferable UBE score that can be used to seek admission in other jurisdictions.

The applicant shall have the option to take all sections of the Academic Bar Examination; if the applicant chooses this option, the score of all sections will be combined under the basic rule.

(3) Carryover of MBE Scores. An applicant who has taken and failed the bar examination in Alabama but who made an MBE scaled score of 140 or above may be excused from taking the MBE. The MBE scaled score may be carried over to any future examination for which the examinee is eligible, provided that the examination is administered within 25 months after the earlier bar examination in which the applicant scored 140 or above on the MBE was administered, and the MBE scaled score will be combined with the applicant's scaled score on the MEE and the MPT portions of the UBE according to the basic rule. Applicants who carry over an MBE score from an earlier bar examination to seek admission in Alabama will not earn a transferable UBE score that can be used to seek admission in other jurisdictions.

The applicant shall have the option to take all sections of the Academic Bar Examination; if the applicant chooses this option, the score of all sections will be combined under the basic rule.

(4) Carryover of Written Test Score. An applicant who has taken and failed the bar examination in Alabama, but who made a scaled score of 140 or above on the MEE and the MPT portions of the UBE, as determined in accordance with the basic rule, may be excused from taking those portions of the bar examination that contribute to the scaled written score on the MEE and the MPT. The scaled written score may be carried over for any future bar examination for which the examinee is eligible, provided that the examination is administered within 25 months after the earlier bar examination in which the carry-over score was received, and the scaled written score will be combined with the applicant's MBE score according to the basic rule. Applicants who carry over a scaled score on the MEE and the MPT to seek admission in Alabama will not earn a transferable UBE score that can be used to seek admission in other jurisdictions.

The applicant shall have the option to take all sections of the Academic Bar Examination; if the applicant chooses this option, the score of all sections will be combined under the basic rule.

(5) Time of Election to Transfer or Carry Over Scores. Elections regarding the transfer from another jurisdiction of an MBE score or the carryover of an MBE score or the carryover of a scaled written score on the MEE and the MPT from a previous examination taken in Alabama must be made at the time an application to sit for an examination is filed.

(6) Transfer of UBE Score. An applicant who has taken the entire UBE in a single administration in another jurisdiction and earned a total UBE scaled score of 260 or above may transfer his or her UBE score and be excused from taking the UBE in Alabama, provided that the applicant otherwise satisfies the requirements of these Rules applicable to applicants seeking admission by examination. The transferred UBE score will be valid for a period of no longer than 25 months after the date of administration of the UBE that resulted in the transferred score.

Applicants seeking admission on the basis of a transferred UBE score may file an application for admission to the Alabama State Bar at any time after their UBE score has been released by the transferring jurisdiction. At the time of filing such application, the applicant must pay the fee prescribed in item (5) of the Fee Schedule (see Appendix). No later than the date the application is filed, such applicants shall request an official UBE score transcript be sent to the Board of Bar Examiners by the National Conference of Bar Examiners.

The transferred UBE score must be valid in accordance with the provisions of this subsection on the date the applicant may otherwise be certified for admission to the Alabama State Bar. If the transferred UBE score becomes invalid on or before said date, then the application for admission shall be withdrawn, and the applicant shall not be entitled for admission on such application.

D. Access to Information Regarding the UBE. The Board of Bar Examiners shall make available to applicants sample and informational materials that will acquaint applicants with the general content and format of the MBE, the MEE, and the MPT. This requirement may be met by routinely distributing to all applicants the information booklets on these examinations published by the National Conference of Bar Examiners and by advising applicants of the availability, through the National Conference of Bar Examiners, of sample questions and analyses.

A reasonable fee, to be determined by the Board of Bar Examiners with the concurrence of the Board of Bar Commissioners, may be charged to parties outside the routine distribution who request copies of the materials.

E. The MPRE. Before admission to the Bar, each applicant must have successfully passed the MPRE. To successfully complete the MPRE, the applicant must achieve a scaled score of at least 75, as that score is determined by the testing authority. Successful completion of the MPRE by an applicant for admission by examination at any time within the 25 months preceding the Academic Bar Examination will be accepted. If an applicant has passed the Academic Bar Examination but has not successfully completed the MPRE, he or she shall have a period of 25 months from the date of the Academic Bar Examination in which to successfully complete the MPRE. Applicants who transfer a UBE score from another jurisdiction must successfully complete the MPRE no earlier than 25 months before the date of administration of the UBE in which the transferrable UBE score was earned.

Completed application materials for testing, as well as all other correspondence, inquiries, and requests concerning application materials and the administration and processing of the MPRE should be directed to the National Conference of Bar Examiners.

F. Time of Bar Examination. The examination will be given on Tuesday and Wednesday of that week in February and in July on which the UBE is administered. The MPT and the MEE will be on Tuesday, and the MBE on Wednesday.

APPENDIX F

Appendix. Fee Schedule

- (1) \$575.00, see Rule II.B(1) (applicants who have never made application to the bar of any jurisdiction).
- (2) \$575.00 and costs associated with a character and fitness investigation conducted by the NCBE, see Rule II.B(2) (any applicant who has previously made application to the bar of any other jurisdiction and foreign-education or foreign-practicing-attorney applicants).
- (3) \$575.00, see Rule II.E (reapplications).
- (4) \$875.00 and costs associated with a character and fitness investigation conducted by the NCBE, see Rule III. A(1)(k) (out-of-state attorneys qualifying for reciprocity pay costs associated with such investigation).
- (5) \$875.00 and costs associated with a character and fitness investigation conducted by the NCBE, see Rule VI(B).C(6) (UBE-score transfer applicants).

IN THE SUPREME COURT OF ALABAMA
October 5, 2018

ORDER

IT IS ORDERED that Rule 32.1, Alabama Rules of Judicial Administration, and the appendix thereto, be amended to read in accordance with Appendix A to this order and that the Committee Comments to the Amendment to Rule 32.1, Effective October 5, 2018, be adopted to read in accordance with Appendix B to this order;

IT IS FURTHER ORDERED that the amendment of Rule 32.1 and the adoption of the Committee Comments to Rule 32.1 are effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 32.1:

"Note from the reporter of decisions: The order amending Rule 32.1 and adopting the Committee Comments Effective October 5, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 5th day of October, 2018.



Clerk, Supreme Court of Alabama

FILED
October 5, 2018
8:34 am
Clerk
Supreme Court of Alabama

APPENDIX A

Rule 32.1

Domestic Relations and Child Support Information Sheet.

This rule, as adopted effective July 1, 1998, shall apply to all filings made on or after July 1, 1998.

A "domestic relations/child support information sheet" (see the form attached as an appendix to this rule), shall accompany the filing of each complaint, petition, answer, or motion to intervene in a divorce action, an action seeking to establish or to modify child support, or an action to determine paternity. Each party, or if the party is represented by counsel, the party's attorney, shall complete the domestic relations/child support information sheet and print his or her name and daytime telephone number in the spaces provided at the bottom of the sheet before filing it with the court. However, the failure to file the domestic relations/child support information sheet when the complaint, petition, answer, or motion to intervene is filed shall not affect the validity of the action or the date of the commencement of the action.

If the complaint, petition, answer, or motion to intervene is presented to the clerk of the court without a properly completed domestic relations/child support information sheet, the clerk shall accept the complaint, petition, answer, or motion to intervene and inform the person filing it of the requirements of this rule, and each party, or, if a party is represented by counsel, then the party's attorney, shall promptly file a completed domestic relations/child support information sheet.

If a party fails to comply with the requirements of this rule, the court in which the action is pending may make such orders as it believes are just, including issuing an order staying the proceedings until the domestic relations/child support information sheet is filed, or, after proper notice, dismissing the action; and, in lieu of any other orders, or in addition to any orders, the court may treat the failure to comply with the requirements of this rule as contempt of court.

State of Alabama Unified Judicial System Form CS-47 Rev. 10/2018	<i>Appendix to Rule 32.1</i> DOMESTIC RELATIONS/CHILD SUPPORT INFORMATION SHEET	Case Number _____
--	---	-------------------

IN THE _____ COURT OF _____, ALABAMA
 (Circuit or District) (Name of County)

v.

Plaintiff Defendant

Information Concerning the Parties:

Plaintiff (☐ Mother, ☐ Father, ☐ Other _____) or
 Other party (Specify) (_____)

Address (including city, state, and zip code):

Telephone No: _____

Last four numbers of Social Security No.: _____ Date of Birth: _____
 ***_**_

Sex: _____

Place of Employment (if applicable) and Address of Employer (including city, state, and zip code):

Work Telephone No: _____

Defendant (☐ Mother, ☐ Father, ☐ Other _____) or
 Other party (Specify) (_____)

Address (including city, state, and zip code):

Telephone No: _____

Last four numbers of Social Security No.: _____ Date of Birth: _____
 ***_**_

Sex: _____

Place of Employment (if applicable) and Address of Employer (including city, state, and zip code):

Work Telephone No: _____

Are there minor children under the age of 19 who are subject to this action? ☐ Yes ☐ No

If you marked yes, you must complete the following information.

Information Concerning the Minor Child(ren): Name(s)	Address(es)	Sex(es)	Date(s) of Birth	Last four numbers of Social Security Number(s)
_____	_____	_____	_____	***_**_
_____	_____	_____	_____	***_**_
_____	_____	_____	_____	***_**_
_____	_____	_____	_____	***_**_

THE CHILD SUPPORT REFORM ACT OF 1997, CODIFIED AT § 30-3-190 ET SEQ., ALA.CODE 1975, REQUIRES THAT THE DEPARTMENT OF HUMAN RESOURCES MAINTAIN THE ABOVE INFORMATION IN THE RECORD FOR ALL PARTIES IN DOMESTIC RELATIONS, SUPPORT, OR PATERNITY ACTIONS. THIS INCLUDES GRANDPARENTS OR OTHERS WHO MAY EITHER INITIATE AN ACTION OR INTERVENE IN AN EXISTING ACTION.

Completed By _____ Date Completed: _____
 (Print Name)

Daytime Phone No.: _____

APPENDIX B

Committee Comments to Amendment to Rule 32.1
Effective October 5, 2018

To reflect the use of the child support information sheet in paternity actions and other domestic-relations cases, the amendment renames the "child support information sheet" the "domestic relations/child support information sheet." The information sheet must be filed by both parties in all domestic-relations actions, even those in which the parties have no minor children. In that event, the parties will check the box marked "No" following the question: "Are there minor children under the age of 19 who are subject to this action?" and need not complete the block of information concerning minor children.

IN THE SUPREME COURT OF ALABAMA
November 30, 2018

ORDER

IT IS ORDERED that Rule 19, Alabama Rules of Judicial Administration, be amended by deleting Attachment One: Alabama Uniform Traffic Ticket and Complaint, Form UTTC-1 as revised October 2006 (Series N), and substituting therefor Attachment One: Alabama Uniform Traffic Ticket and Complaint, Form UTTC-1, as revised November 2018 (Series P), in the form attached as an appendix to this order; and

IT IS FURTHER ORDERED that this amendment be effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 19:

"Note from the reporter of decisions: The order amending Attachment One: Alabama Uniform Traffic Ticket and Complaint, an attachment to Rule 19, effective November 30, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 30th day of November, 2018.



Clerk, Supreme Court of Alabama

<p>FILED November 30, 2018 12:25 pm Clerk Supreme Court of Alabama</p>
--

APPENDIX

Attachment One. Alabama Uniform Traffic Ticket and Complaint

FORM UTTC-1
REV 11/18

ALABAMA UNIFORM TRAFFIC TICKET AND COMPLAINT

COURT CASE NO

YEAR NUMBER

ALABAMA, COUNTY OF				CO	CITY	TICKET NUMBER	P
The undersigned, being duly sworn, deposes and says that he/she has probable cause to believe and does believe that the person herein named did, within the previous 12 months, commit the offense set forth contrary to law in that on or about						TYPE VEHICLE <input type="checkbox"/> Commercial <input type="checkbox"/> Private <input type="checkbox"/> Haz-Mat Involved <input type="checkbox"/> Passenger (requiring passenger endorsement)	
Month	Day	Year	At	Time	Approx.		
First Name	Middle/Maiden		Last				
Address Street							
City		State		Zip Code		CDL Required <input type="checkbox"/> Yes <input type="checkbox"/> No	
State	Driver's License Number				Class of License		
Sex	Race	DOB	M	D	Y	Social Security Number	Driver's License in Possession <input type="checkbox"/> Yes <input type="checkbox"/> No
Hgt.	Wgt.	Eyes	Hair	Vehicle Tag Number			State Year
Vehicle Description				Owner of Vehicle <input type="checkbox"/> Driver <input type="checkbox"/> Employer <input type="checkbox"/> Other			
Employer/Owner of Vehicle (Address)							
<input type="checkbox"/> Did unlawfully operate a motor vehicle, other vehicle, or <input type="checkbox"/> otherwise unlawfully use a public street, road, highway or other place, at or near _____ within the <input type="checkbox"/> city limits or <input type="checkbox"/> police jurisdiction of _____, or <input type="checkbox"/> within _____ County, at or near the following location _____ in violation of <input type="checkbox"/> Section _____ Code of Alabama 1975, <input type="checkbox"/> or Rule/Regulation number (or) <input type="checkbox"/> Municipal Ordinance No. _____ duly adopted and in force at the time the offense was committed, (if applicable) <input type="checkbox"/> adopting Section _____ Code 1975, more particularly described below:							
CHECK THE APPROPRIATE BLOCK:							
1. <input type="checkbox"/> Speeding _____ MPH _____ Speed Limit 2. <input type="checkbox"/> Reckless Driving (Specify facts below) 3. <input type="checkbox"/> Driving without First Obtaining a Driver's License DID DRIVE OR BE IN ACTUAL PHYSICAL CONTROL OF A VEHICLE WHILE: 4. <input type="checkbox"/> There was .08% or More By Weight of Alcohol in His/Her Blood 4. <input type="checkbox"/> Under the Influence of Alcohol 5. <input type="checkbox"/> Under the Influence of Controlled Substance 71. <input type="checkbox"/> Under the Combined Influence of Alcohol and Controlled Substance 72. <input type="checkbox"/> Under the Influence of any Substance which impairs the Mental or Physical Faculties 6. <input type="checkbox"/> Failure to Yield Right of Way <input type="checkbox"/> Other Violation (Specify) _____				UCR Code _____ ML Mkr _____ Street/Road Code _____ 7. <input type="checkbox"/> Driving While Revoked 8. <input type="checkbox"/> Driving While Suspended 10. <input type="checkbox"/> Running Red Light 13. <input type="checkbox"/> Improper Equipment (Specify) _____ 14. <input type="checkbox"/> Improper Passing 28. <input type="checkbox"/> Improper Tag (Specify) _____ 29. <input type="checkbox"/> Improper Turn 42. <input type="checkbox"/> Overweight Vehicle 61. <input type="checkbox"/> Child Restraint Violation 77. <input type="checkbox"/> Seat Belt Violation			
FACTS RELATING TO THE OFFENSE (Witnesses, etc) <input type="checkbox"/> Companion Case (Traffic, Non-Traffic, Felony, Other) <input type="checkbox"/> Accident Involved							
Complainant's Signature				Officer ID	Agency ORI		
Verified and Acknowledged before me this date (Circle Title) Judge/Magistrate				M	D	Y	
<input type="checkbox"/> Municipal <input type="checkbox"/> District Court				COURT APPEARANCE INFORMATION			
Court Appearance Date <input type="checkbox"/>				Time	Court Address		
M	D	Y	:	<input type="checkbox"/> AM <input type="checkbox"/> PM			
I promise to appear in court at said time and place or otherwise comply with the provisions of this complaint and instructions of the notice part of this ticket							
Defendant's Signature:				Phone ()			
<input type="checkbox"/> Released on Own Recognizance <input type="checkbox"/> Driver's License Posted in Lieu of Bond							

NAME

TICKET-P

CASE

COMPLAINT AND AFFIDAVIT

INSTRUCTION

PRESS FIRMLY

TO OFFICER:

ASK IF MOTORIST'S ADDRESS IS CORRECT ON DRIVER'S LICENSE

[FRONT]

Court O.R.I. AL		COURT RECORD		COURT CASE NUMBER YEAR NUMBER	
<input type="checkbox"/> MUNICIPAL COURT OR <input type="checkbox"/> DISTRICT COURT OF				COUNTY TICKET NUMBER P	
DEFENDANT'S NAME				CHARGE	
CONTINUED TO		M	D	Y	REASON
2 ND CONTINUANCE		M	D	Y	REASON
UTTC-6A MAILED M D Y		NEW COURT DATE M D Y		UTTC-6B ISSUED M D Y	
WARRANT ISSUED M D Y		BOND SET \$ CASH		WARRANT SERVED M D Y	
WARRANT RECALLED M D Y		BOND FORFEITURE M D Y		ORDER FINAL M D Y	
ORDER ISSUED ATTORNEY FOR DEFENDANT				CHECK IF <input type="checkbox"/> Defendant informed of right to counsel <input type="checkbox"/> Defendant found indigent, counsel appointed	
PLEA OF DEFENDANT (CHECK ONE) 1 <input type="checkbox"/> Guilty as charged 2 <input type="checkbox"/> Guilty of 3 <input type="checkbox"/> Not guilty					
ADJUDICATION (CHECK ONE) 3 <input type="checkbox"/> Guilty of 1 <input type="checkbox"/> Guilty as charged 2 <input type="checkbox"/> Not guilty 4 <input type="checkbox"/> Not prossed 5 <input type="checkbox"/> Dismissed					
ORDERS OF THE COURT					
FINE \$		COURT COSTS \$		TOTAL FINE AND COURT COSTS \$	
ADDITIONAL PENALTIES/FEE/COSTS					
HEAD INJURY DUI \$		CRIMINAL HISTORY DUI \$ 10.00		CRIME VICTIMS (DUI/RECKLESS DRIVING) MISDEMEANOR (MINIMUM \$25.00)	
HOUSING & MAINTENANCE \$		MEDICAL \$		ATTORNEY RECOUPMENT \$	
RESTITUTION \$		PARTIAL PAYMENTS AUTHORIZED FOR \$			
<input type="checkbox"/> JAILED M D Y		DAYS RELEASED <input type="checkbox"/>		LOCATION M D Y	
<input type="checkbox"/> SENTENCE SUSPENDED Days Months		<input type="checkbox"/> PROBATION Days Months		<input type="checkbox"/> COMMUNITY SERVICE Days Months	
<input type="checkbox"/> TRAFFIC SAFETY PROGRAM M D Y		<input type="checkbox"/> SUBSTANCE ABUSE EVALUATION		<input type="checkbox"/> COURT REFERRAL PROGRAM COMPLETED M D Y	
COURT ORDERED LICENSE SUSPENSION _____ DAYS _____ MOS.		<input type="checkbox"/> CONSECUTIVE <input type="checkbox"/> CONCURRENT		LICENSE SURRENDERED TO COURT M D Y RECEIVED BY	
CONFIDENTIAL: <input type="checkbox"/> NO - <input type="checkbox"/> IF YES, <input type="checkbox"/> Juvenile <input type="checkbox"/> Youthful Offender					
DISPOSITION DATE M D Y		SIGNATURE OF JUDGE/MAGISTRATE			
CASE APPEALED M D Y		APPEAL BOND \$		CIRCUIT COURT CASE NUMBER	
ARRESTING AGENCY (TYPE OF ARREST) <input type="checkbox"/> STATE <input type="checkbox"/> COUNTY <input type="checkbox"/> MUNICIPAL					
CASH RECEIVED FROM		RECEIPT \$		AMOUNT \$ DATE M D Y	
NAME AND TITLE					
LICENSE ATTACHED: <input type="checkbox"/> YES <input type="checkbox"/> NO ALFA RECEIVED LICENSE <input type="checkbox"/> YES <input type="checkbox"/> NO					

COURT ACTION AND DISPOSITION

[BACK]

ALABAMA UNIFORM TRAFFIC
TICKET AND COMPLAINT

COURT CASE NO

YEAR NUMBER

ALABAMA, COUNTY OF				CO	CITY	TICKET NUMBER	P
The undersigned, being duly sworn, deposes and says that he/she has probable cause to believe and does believe that the person herein named did, within the previous 12 months, commit the offense set forth contrary to law in that on or about						TYPE VEHICLE <input type="checkbox"/> Commercial <input type="checkbox"/> Private <input type="checkbox"/> Haz-Mat Involved <input type="checkbox"/> Passenger (requiring passenger endorsement)	
Month		Day		Year		At Time <input type="checkbox"/> AM <input type="checkbox"/> PM <input type="checkbox"/> MT	
First Name		Middle/Maiden		Last			
Address Street							
City		State		Zip Code		CDL Required <input type="checkbox"/> Yes <input type="checkbox"/> No	
State		Driver's License Number				Class of License	
Sex	Race	DOB	M	D	Y	Social Security Number	
Hgt.		Wgt.	Eyes	Hair	Vehicle Tag Number		State Year
Vehicle Description				Owner of Vehicle <input type="checkbox"/> Driver <input type="checkbox"/> Employer <input type="checkbox"/> Other			
Employer/Owner of Vehicle (Address)							
<input type="checkbox"/> Did unlawfully operate a motor vehicle, other vehicle, or <input type="checkbox"/> otherwise unlawfully use a public street, road, highway or other place, at or near _____, within the <input type="checkbox"/> city limits or <input type="checkbox"/> police jurisdiction of _____, or <input type="checkbox"/> within _____ County, at or near the following location _____ in violation of <input type="checkbox"/> Section _____ Code of Alabama 1975, <input type="checkbox"/> or Rule/Regulation number (or) <input type="checkbox"/> Municipal Ordinance No. _____ duly adopted and in force at the time the offense was committed, (if applicable) <input type="checkbox"/> adopting Section _____ Code 1975, more particularly described below:							
CHECK THE APPROPRIATE BLOCK:				UCR Code ML Mkr Street/Road Code			
1. <input type="checkbox"/> Speeding _____ MPH _____ Speed Limit 2. <input type="checkbox"/> Reckless Driving (Specify facts below) 3. <input type="checkbox"/> Driving without First Obtaining a Driver's License DID DRIVE OR BE IN ACTUAL PHYSICAL CONTROL OF A VEHICLE WHILE: 4. <input type="checkbox"/> There was .08% or More By Weight of Alcohol in His/Her Blood 4. <input type="checkbox"/> Under the Influence of Alcohol 5. <input type="checkbox"/> Under the Influence of Controlled Substance 71. <input type="checkbox"/> Under the Combined Influence of Alcohol and Controlled Substance 72. <input type="checkbox"/> Under the Influence of any Substance which impairs the Mental or Physical Faculties 6. <input type="checkbox"/> Failure to Yield Right of Way <input type="checkbox"/> Other Violation (Specify) _____				7. <input type="checkbox"/> Driving While Revoked 8. <input type="checkbox"/> Driving While Suspended 10. <input type="checkbox"/> Running Red Light 13. <input type="checkbox"/> Improper Equipment (Specify) _____ 14. <input type="checkbox"/> Improper Passing 28. <input type="checkbox"/> Improper Tag (Specify) _____ 29. <input type="checkbox"/> Improper Turn 42. <input type="checkbox"/> Overweight Vehicle 61. <input type="checkbox"/> Child Restraint Violation 77. <input type="checkbox"/> Seat Belt Violation			
FACTS RELATING TO THE OFFENSE (Witnesses, etc)				<input type="checkbox"/> Companion Case (Traffic, Non-Traffic, Felony, Other) <input type="checkbox"/> Accident involved			
Complainant's Signature				Officer ID.		Agency OR AL	
Verified and Acknowledged before me this date (Circle Title) Judge/Magistrate				M		D Y	
<input type="checkbox"/> Municipal <input type="checkbox"/> District Court				COURT APPEARANCE INFORMATION			
				Phone ()			
Court Appearance Date		Time		Court Address			
M D Y		<input type="checkbox"/> AM <input type="checkbox"/> PM					
I promise to appear in court at said time and place or otherwise comply with the provisions of this complaint and instructions of the notice part of this ticket							
Defendant's Signature:				Phone ()			
<input type="checkbox"/> Released on Own Recognizance <input type="checkbox"/> Driver's License Posted in Lieu of Bond							

NAME

TICKET-P

CASE

ABSTRACT OF COURT RECORD – ALEA DATA INPUT

INSTRUCTION

PRESS FIRMLY

TO OFFICER:

ASK IF MOTORIST'S ADDRESS IS CORRECT ON DRIVER'S LICENSE

[FRONT]

Court O.R.I.		ABSTRACT OF COURT RECORD		COURT CASE NUMBER	
AL				YEAR	NUMBER
<input type="checkbox"/> MUNICIPAL COURT OR <input type="checkbox"/> DISTRICT COURT OF				TICKET NUMBER P	
DEFENDANT'S NAME				COUNTY	
				CHARGE	
CONTINUED TO		M	D	Y	REASON
2 ND CONTINUANCE		M	D	Y	REASON
UTTC-6A MAILED		NEW COURT DATE		UTTC-6B ISSUED	
M	D	Y	M	D	Y
WARRANT ISSUED		BOND SET \$		WARRANT SERVED	
M	D	Y	CASH	M	D
UTTC-6B CLEARANCE		WARRANT RECALLED			
M	D	Y	M	D	Y
CONDITIONAL BOND FORFEITURE ORDER ISSUED		M	D	Y	BOND FORFEITURE ORDER FINAL
ATTORNEY FOR DEFENDANT		CHECK IF <input type="checkbox"/> Defendant informed of right to counsel <input type="checkbox"/> Voluntarily waived counsel <input type="checkbox"/> Defendant found indigent, counsel appointed			
		APPLICABLE			
PLEA OF DEFENDANT (CHECK ONE)					
1 <input type="checkbox"/> Guilty as charged		2 <input type="checkbox"/> Guilty of		3 <input type="checkbox"/> Not guilty	
ADJUDICATION (CHECK ONE)					
3 <input type="checkbox"/> Guilty of		1 <input type="checkbox"/> Guilty as charged		2 <input type="checkbox"/> Not guilty	
				4 <input type="checkbox"/> Not prosessed 5 <input type="checkbox"/> Dismissed	
ORDERS OF THE COURT					
FINE \$		COURT COSTS \$		TOTAL FINE AND COURT COSTS \$	
ADDITIONAL PENALTIES/FEEES/COSTS					
HEAD INJURY DUI \$		CRIMINAL HISTORY DUI \$ 10.00		CRIME VICTIMS (DUI/RECKLESS DRIVING) MISDEMEANOR (MINIMUM \$25.00)	
HOUSING & MAINTENANCE \$		MEDICAL \$		ATTORNEY RECOUPMENT \$	
				RESTITUTION \$	
<input type="checkbox"/> JAILED		M	D	Y	LOCATION
DAYS		RELEASED			
<input type="checkbox"/> SENTENCE SUSPENDED		<input type="checkbox"/> PROBATION		<input type="checkbox"/> COMMUNITY SERVICE	
Days		Days		Days	
Months		Months		Months	
<input type="checkbox"/> TRAFFIC SAFETY PROGRAM		<input type="checkbox"/> SUBSTANCE ABUSE EVALUATION		<input type="checkbox"/> COURT REFERRAL PROGRAM COMPLETED	
COURT ORDERED LICENSE SUSPENSION		<input type="checkbox"/> CONSECUTIVE		LICENSE SURRENDERED TO COURT	
DAYS		<input type="checkbox"/> CONCURRENT		M D Y	
				RECEIVED BY	
CONFIDENTIAL: <input type="checkbox"/> NO - <input type="checkbox"/> IF YES: <input type="checkbox"/> Juvenile <input type="checkbox"/> Youthful Offender					
DISPOSITION DATE		SIGNATURE OF JUDGE/MAGISTRATE			
M	D	Y			
CASE APPEALED		APPEAL BOND \$		CIRCUIT COURT CASE NUMBER	
M	D	Y			
ARRESTING AGENCY (TYPE OF ARREST) <input type="checkbox"/> STATE <input type="checkbox"/> COUNTY <input type="checkbox"/> MUNICIPAL					
CASH RECEIVED FROM		RECEIPT \$		AMOUNT \$	
NAME AND TITLE				DATE M D Y	
LICENSE ATTACHED: <input type="checkbox"/> YES <input type="checkbox"/> NO ALEA RECEIVED LICENSE <input type="checkbox"/> YES <input type="checkbox"/> NO					

COURT ACTION AND DISPOSITION – ALEA DATA INPUT

[BACK]

ALABAMA UNIFORM TRAFFIC
TICKET AND COMPLAINT

COURT CASE NO

YEAR NUMBER

ALABAMA, COUNTY OF				CO	CITY	TICKET NUMBER	P
The undersigned, being duly sworn, deposes and says that he/she has probable cause to believe and does believe that the person herein named did, within the previous 12 months, commit the offense set forth contrary to law in that on or about						TYPE VEHICLE <input type="checkbox"/> Commercial <input type="checkbox"/> Private <input type="checkbox"/> Haz-Mat Involved <input type="checkbox"/> Passenger (requiring passenger endorsement) <input type="checkbox"/> MT	
First Name		Middle/Maiden		Last			
Address Street							
City		State		Zip Code		CDL Required <input type="checkbox"/> Yes <input type="checkbox"/> No	
State		Driver's License Number				Class of License	
Sex	Race	DOB	M	D	Y	Social Security Number	
Hgt.		Wgt.	Eyes	Hair	Vehicle Tag Number		State Year
Vehicle Description						Owner of Vehicle <input type="checkbox"/> Driver <input type="checkbox"/> Employer <input type="checkbox"/> Other	
Employer/Owner of Vehicle (Address)							
<input type="checkbox"/> Did unlawfully operate a motor vehicle, other vehicle, or <input type="checkbox"/> otherwise unlawfully use a public street, road, highway or other place, at or near _____, within the <input type="checkbox"/> city limits or <input type="checkbox"/> police jurisdiction of _____, or <input type="checkbox"/> within _____ County, at or near the following location _____ in violation of <input type="checkbox"/> Section _____ Code of Alabama 1975, <input type="checkbox"/> or Rule/Regulation number (or) <input type="checkbox"/> Municipal Ordinance No. _____ duly adopted and in force at the time the offense was committed, (if applicable) <input type="checkbox"/> adopting Section _____ Code 1975, more particularly described below:							
CHECK THE APPROPRIATE BLOCK:						UCR Code	ML Mkr
1. <input type="checkbox"/> Speeding _____ MPH _____ Speed Limit 2. <input type="checkbox"/> Reckless Driving (Specify facts below) 3. <input type="checkbox"/> Driving without First Obtaining a Driver's License DID DRIVE OR BE IN ACTUAL PHYSICAL CONTROL OF A VEHICLE WHILE: 4. <input type="checkbox"/> There was .08% or More By Weight of Alcohol in His/Her Blood 4. <input type="checkbox"/> Under the Influence of Alcohol 5. <input type="checkbox"/> Under the Influence of Controlled Substance 71. <input type="checkbox"/> Under the Combined Influence of Alcohol and Controlled Substance 72. <input type="checkbox"/> Under the Influence of any Substance which impairs the Mental or Physical Faculties 6. <input type="checkbox"/> Failure to Yield Right of Way <input type="checkbox"/> Other Violation (Specify) _____						7. <input type="checkbox"/> Driving While Revoked 8. <input type="checkbox"/> Driving While Suspended 10. <input type="checkbox"/> Running Red Light 13. <input type="checkbox"/> Improper Equipment (Specify) _____ 14. <input type="checkbox"/> Improper Passing 28. <input type="checkbox"/> Improper Tag (Specify) _____ 29. <input type="checkbox"/> Improper Turn 42. <input type="checkbox"/> Overweight Vehicle 61. <input type="checkbox"/> Child Restraint Violation 77. <input type="checkbox"/> Seat Belt Violation	
FACTS RELATING TO THE OFFENSE <input type="checkbox"/> Companion Case (Traffic, Non-Traffic, Felony, Other) (Witnesses, etc) <input type="checkbox"/> Accident Involved							
Complainant's Signature				Officer ID.	Agency ORI		
Verified and Acknowledged before me this date				M	D	Y	
(Circle Title) Judge/Magistrate							
COURT APPEARANCE INFORMATION <input type="checkbox"/> Municipal <input type="checkbox"/> District Court Phone ()							
Court Appearance Date		Time		Court Address			
M D Y		<input type="checkbox"/> AM <input type="checkbox"/> PM					
I promise to appear in court at said time and place or otherwise comply with the provisions of this complaint and instructions of the notice part of this ticket							
Defendant's Signature:				Phone ()			
<input type="checkbox"/> Released on Own Recognizance <input type="checkbox"/> Driver's License Posted in Lieu of Bond							

NAME

TICKET-P

CASE

POLICE RECORD

INSTRUCTION

PRESS FIRMLY

TO OFFICER:

ASK IF MOTORIST'S ADDRESS IS CORRECT ON DRIVER'S LICENSE

[FRONT]

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

[BACK]

ALABAMA UNIFORM TRAFFIC
TICKET AND COMPLAINT

COURT CASE NO

YEAR NUMBER

ALABAMA, COUNTY OF				CO	CITY	TICKET NUMBER	P
The undersigned, being duly sworn, deposes and says that he/she has probable cause to believe and does believe that the person herein named did, within the previous 12 months, commit the offense set forth contrary to law in that on or about:						TYPE VEHICLE <input type="checkbox"/> Commercial <input type="checkbox"/> Private <input type="checkbox"/> Haz-Mat Involved <input type="checkbox"/> Passenger (requiring passenger endorsement) <input type="checkbox"/> MT	
First Name		Middle/Maiden		Last			
Address Street							
City		State		Zip Code		CDL Required <input type="checkbox"/> Yes <input type="checkbox"/> No	
State		Driver's License Number				Class of License	
Sex	Race	DOB	M	D	Y	Social Security Number	
Hgt.		Wgt.	Eyes	Hair	Vehicle Tag Number		State Year
Vehicle Description						Owner of Vehicle <input type="checkbox"/> Driver <input type="checkbox"/> Employer <input type="checkbox"/> Other	
Employer/Owner of Vehicle (Address)							
<input type="checkbox"/> Did unlawfully operate a motor vehicle, other vehicle, or <input type="checkbox"/> otherwise unlawfully use a public street, road, highway or other place, at or near _____ within the <input type="checkbox"/> city limits or <input type="checkbox"/> police jurisdiction of _____ or <input type="checkbox"/> within _____ County, at or near the following location _____ in violation of <input type="checkbox"/> Section _____ Code of Alabama 1975, <input type="checkbox"/> or Rule/Regulation number (or) <input type="checkbox"/> Municipal Ordinance No. _____ duly adopted and in force at the time the offense was committed, (if applicable) <input type="checkbox"/> adopting Section _____ Code 1975, more particularly described below:							
CHECK THE APPROPRIATE BLOCK:						UCR Code	ML Mkr
1. <input type="checkbox"/> Speeding _____ MPH _____ Speed Limit 2. <input type="checkbox"/> Reckless Driving (Specify facts below) 3. <input type="checkbox"/> Driving without First Obtaining a Driver's License DID DRIVE OR BE IN ACTUAL PHYSICAL CONTROL OF A VEHICLE WHILE: 4. <input type="checkbox"/> There was .08% or More By Weight of Alcohol in His/Her Blood 4. <input type="checkbox"/> Under the Influence of Alcohol 5. <input type="checkbox"/> Under the Influence of Controlled Substance 7. <input type="checkbox"/> Under the Combined Influence of Alcohol and Controlled Substance 7. <input type="checkbox"/> Under the Influence of any Substance which impairs the Mental or Physical Faculties 6. <input type="checkbox"/> Failure to Yield Right of Way <input type="checkbox"/> Other Violation (Specify) _____						7. <input type="checkbox"/> Driving While Revoked 8. <input type="checkbox"/> Driving While Suspended 10. <input type="checkbox"/> Running Red Light 13. <input type="checkbox"/> Improper Equipment (Specify) _____ 14. <input type="checkbox"/> Improper Passing 28. <input type="checkbox"/> Improper Tag (Specify) _____ 29. <input type="checkbox"/> Improper Turn 42. <input type="checkbox"/> Overweight Vehicle 61. <input type="checkbox"/> Child Restraint Violation 77. <input type="checkbox"/> Seat Belt Violation	
FACTS RELATING TO THE OFFENSE (Witnesses, etc) <input type="checkbox"/> Companion Case (Traffic, Non-Traffic, Felony, Other) <input type="checkbox"/> Accident Involved							
Complainant's Signature				Officer ID	Agency ORI		
Verified and Acknowledged before me this date (Circle Title) Judge/Magistrate				M	D	Y	
COURT APPEARANCE INFORMATION <input type="checkbox"/> Municipal <input type="checkbox"/> District Court Phone ()							
Court Appearance Date		Time		Court Address			
M	D	Y	:				
I promise to appear in court at said time and place or otherwise comply with the provisions of this complaint and instructions of the notice part of this ticket							
Defendant's Signature:				Phone ()			
<input type="checkbox"/> Released on Own Recognizance <input type="checkbox"/> Driver's License Posted in Lieu of Bond							

NAME
TICKET-P
CASE

DEFENDANT'S COPY

INSTRUCTION

PRESS FIRMLY

TO OFFICER:

ASK IF MOTORIST'S ADDRESS IS CORRECT ON DRIVER'S LICENSE

[FRONT]

NOTICE

INSTRUCTIONS TO THE DEFENDANT

1. You must appear in court on the appearance date shown on the front of this ticket except as provided below.
2. If you have not settled this case prior to the appearance date and you do not appear in court on that date, a warrant will be issued for your arrest and the Alabama Law Enforcement Agency will be notified to suspend your driver's license.
3. You do not have to appear in court for the following offenses unless you have been convicted of, or plead guilty to, two or more traffic violations during the preceding 12 months (parking tickets excluded):

Speeding	No red or orange flag or red light or amber strobe	IMPROPER:
Allowing child under the age of 16 to operate motor vehicle	Obstructing driver's view	Backing
Blocking highway	Operating a motor vehicle without a driver's license	Brakes
Casting a light from a public road	Overweight/overheight/overlength truck	Lights
Coasting	Parking more than 18 inches from curb	Muffler
Crossing a fire hose	Refusal to weigh	Or no rearview mirror
Driving on wrong side of road	Running red light	Passing
Driving upon sidewalk	Running stop sign	Signal
Failure to dim headlights	Shifting load	Stopping or parking on or in highway
Failure to stop at railroad crossing	Spilling load	Stopping, standing, or parking in specified places
Failure to use child restraint	Stopping on highway	Stopping, standing, or parking outside business or residence
Failure to wear safety belt	Switched personalized license plates	Tag
Failure to yield right-of-way	Unattended motor vehicle	Tag classification
Failure to yield to emergency vehicle	Violating driver's license restriction or endorsement	Tires
Following emergency vehicle		Turn
Following too closely		Use of clearly indicated divided highway
Hitchhiking		Window tinting
Littering highway		
No helmet (motorcycle rider)		
No permit (oversized width, height, length)		

Other minor traffic offenses may be added to this list which will allow you to plead guilty before a magistrate. You may contact the court shown on the reverse side of the ticket to determine if the offense with which you are charged is included. If you are charged with one of the above offenses and have not been convicted of two or more traffic violations during the preceding 12 months, you may enter a plea of guilty either in person or by mail to the court clerk or magistrate not later than 24 hours before the court date shown on the ticket. To do so, you must sign the "Plea of Guilty/Waiver of Rights" set forth below and present this copy of the ticket and pay all fines and court costs.

4. You must contact the court for the amount of the fine and court costs. Upon a plea of guilty or a conviction for the offense charged within this complaint, you have 60 days to satisfy any monetary judgment against you. If you cannot pay any monetary judgment against you in 60 days, you may apply to the court to request payment of a monetary judgment in installments. You must obtain a court order approving an installment plan and provide proof of financial responsibility and such an order to the Secretary of the Alabama Law Enforcement Agency within 60 days of the entry of any monetary judgment against you OR YOUR LICENSE WILL BE SUBJECT TO AUTOMATIC SUSPENSION.
5. Penalty points are assessed upon conviction under the provisions of Alabama statutes and the Alabama Law Enforcement Agency's Point System and may result in the suspension or revocation of your driver's license by the Alabama Law Enforcement Agency.

PAYMENT MUST BE BY CERTIFIED CHECK OR MONEY ORDER IF MADE BY MAIL

PLEA OF GUILTY/WAIVER OF RIGHTS

YOU ARE HEREBY ADVISED OF YOUR RIGHTS AS A DEFENDANT IN THIS TRAFFIC CASE
(Please Read Carefully)

I, the undersigned, do hereby enter my appearance on the offense charged within this complaint. I understand that I have certain constitutional rights which I will waive if I plead guilty, namely: the right to a trial before this court; the right to an attorney of my choice, or if I cannot afford one, one appointed by the court; the right at trial to subpoena witnesses on my behalf, to confront and cross-examine witnesses against me and to argue and make objections; and the right to testify in my own behalf. I also understand that I cannot be forced to testify against myself and that I am presumed innocent and that this presumption can be overcome only if the prosecution convinces the judge or jury of my guilt beyond a reasonable doubt.

I understand my constitutional rights set out above and the punishment that will be imposed if I elect to plead guilty before a magistrate. I also understand that my plea of guilty will have the same force and effect as a judgment of conviction by the court and that a record of this conviction will be sent to the driver's license division of the Alabama Law Enforcement Agency (or of the state where I received my license to drive). This may result in the suspension or revocation of my driver's license and may adversely affect my ability to maintain or secure automobile insurance. I further understand that this conviction may result in enhanced penalties on subsequent convictions. I understand my rights and the matters set out above and hereby voluntarily and knowingly waive such rights by pleading guilty as evidenced by my signature below. I further state under penalty of law (Section 13A-10-109, Code of Alabama 1975), that I have not been convicted of two or more traffic violations during the preceding 12 months.

Defendant's Signature _____ Date _____

Defendant's Name (print or type) _____

6. For Minor Equipment Violations: Local municipal ordinances may allow you to have the equipment repaired within 72 hours, excluding Sundays and legal holidays, and present your ticket to any law enforcement officer within the jurisdiction of the offense charged. This officer after inspection of your vehicle may, by signing below, recommend that the charge be dismissed. You must then deliver or forward the ticket to the court clerk at the address on the front of this ticket.

DEFECTIVE EQUIPMENT REPAIRED (OFFICER'S RECOMMENDATION TO DISMISS CHARGE)

Equipment Inspected				Inspecting Officer's Name, PRINTED AND SIGNED:	
Date of Inspection	Time	Officer ID	Agency ORI Number		
Mo Day Year	: <input type="checkbox"/> AM <input type="checkbox"/> PM		AL		

[BACK]

BOOK
P

ALABAMA UNIFORM TRAFFIC TICKET AND COMPLAINT

INSTRUCTION TO OFFICERS

PRINT EVERYTHING BUT SIGNATURES,
USE A MEDIUM BALL POINT PEN AND PRESS FIRMLY.
PRINTING ON TICKET MUST BE LEGIBLE ON ALL COPIES.
(CHECK VIOLATOR'S COPY BEFORE ISSUING).

1. This Uniform Traffic Ticket and Complaint (UTTC) MAY NOT be issued to charge municipal parking offenses, Rule 19(B) Ala.R.Jud.Admin.
2. Use a separate UTTC for each violation.
3. Complete and sign the UTTC, have the motorist sign the promise to appear in court, and give him/her the defendant's copy.
4. Advise the motorist to follow the instructions on the back of the UTTC. Inform him/her of the consequences of failing to appear in court.
5. All copies of a voided ticket must be returned to the local issuing office.
6. This ticket, including the statement of charges, is valid until specifically recalled pursuant to Rule 19(D) Ala.R.Jud.Admin.
7. A commercial motor vehicle is a motor vehicle designed or used to transport passengers or property and: (a.) having gross weight of 26,001 lbs or more; or (b.) designed to transport 16 or more passengers; or (c.) transporting hazardous material pursuant to Title 32-6-49.3.

STATE CODES

AL	Alabama	LA	Louisiana	OR	Oregon
AK	Alaska	ME	Maine	PA	Pennsylvania
AZ	Arizona	MD	Maryland	RI	Rhode Island
AR	Arkansas	MA	Massachusetts	SC	South Carolina
CA	California	MI	Michigan	SD	South Dakota
CO	Colorado	MN	Minnesota	TN	Tennessee
CT	Connecticut	MS	Mississippi	TX	Texas
DE	Delaware	MO	Missouri	UT	Utah
DC	District of Columbia	MT	Montana	VT	Vermont
FL	Florida	NE	Nebraska	VA	Virginia
GA	Georgia	NV	Nevada	WA	Washington
HI	Hawaii	NH	New Hampshire	WV	West Virginia
ID	Idaho	NJ	New Jersey	WI	Wisconsin
IL	Illinois	NM	New Mexico	WY	Wyoming
IN	Indiana	NY	New York	AS	American Samoa
IA	Iowa	NC	North Carolina	CZ	Panama Canal Zone
KS	Kansas	ND	North Dakota	GU	Guam
KY	Kentucky	OH	Ohio	PR	Puerto Rico
		OK	Oklahoma	VI	Virgin Islands

A Certified copy of the Uniform Traffic Ticket and Complaint Form (UTTC-1) may be used in lieu of the Uniform Crime Report (UCR) for reporting to the ACJIC for DUI cause ONLY. The UCR Code for reporting DUI/Liquor arrests is 5404; for DUI/Drugs is 5403. This code should be included in the space provided on all DUI tickets.

ALABAMA UNIFORM TRAFFIC TICKET & COMPLAINT

BOOK
P

Beginning Ticket > P

Ending Ticket > P

Date Issued _____

Issuing Officer _____

Received By: _____
Name ID NO:

AGENCY COPY

[FRONT]

<u>CODE</u>	<u>CHARGE</u>	<u>STATUTE</u>
01	Speeding	
	-Posted	32-5A-171
	-Reasonable/Prudent	32-5A-170
02	Reckless Driving	32-5A-190
03	Driving W/O License	32-6-18
04	DUI	
	-BAC	32-5A-191(a)(1)
	-Under the Influence	32-5A-191(a)(2)
05	-Controlled Substance	32-5A-191(a)(3)
71	-Combined Alcohol & Controlled Substance	32-5A-191(a)(4)
72	-Any Substance	32-5A-191(a)(5)
	-Under 21, BAC .02-.08	32-5A-191(b)
06	Failing to Yield R.O.W.	
	-Intersection	32-5A-110
	-Left Turn	32-5A-111
	-Stop or Yield Intersection	32-5A-112
	-Private or Other Roadway	32-5A-114
	-Emergency Vehicle	32-5A-115
	-Construction	32-5A-116
	Driving While License	
07	-Revoked	32-6-19
08	-Suspended	32-6-19
09	-Canceled	32-6-19
10	Running Red Light	32-5A-31
11	Driving on Wrong Side of Road	32-5A-80
12	Running Stop Sign	32-5A-31
13	Improper	
	-Muffler	32-5-216
	-Lights	32-5-240
	-Tires	32-5-210
	-Mirror	32-5-214
	-Brakes	32-5-212
14	Improper Passing	
	-Opposite Direction	32-5A-81
	-Same Direction (left)	32-5A-82
	-Same Direction (right)	32-5A-83
	-No Passing	32-5A-86
28	Improper Tag – Classification	32-6-52
	Wrongful Use of Classification Tag	32-6-131
	Wrongful Use of Personalized Tag	32-6-155
29	Improper Turn	
	-Left	32-5A-111
	-Intersection	32-5A-130
	-Curve or Crest of Grade	32-5A-131
	-Turning Movement	32-5A-133
42	Overweight Vehicle	32-9-20

[BACK]

IN THE SUPREME COURT OF ALABAMA
December 3, 2018

ORDER

IT IS ORDERED that Rule 44, Alabama Rules of Judicial Administration, be adopted to read in accordance with the appendix to this order;

IT IS FURTHER ORDERED that the adoption of Rule 44 is effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 44:

"Note from the reporter of decisions: The order adopting Rule 44, effective December 3, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 3rd day of December, 2018.



Clerk, Supreme Court of Alabama

FILED December 3, 2018 2:21 pm Clerk Supreme Court of Alabama

APPENDIX

Rule 44

Electronic Filing of Documents.

Any document electronically filed in a circuit court, district court, or juvenile court case shall be accepted by the clerk of that court, except that the Administrative Director of Courts ("the ADC") shall have the discretion to determine the types of documents that are not available for electronic filing and shall publish on the electronic-filing Web site a notice listing all documents that are not available for electronic filing. Individuals who file documents electronically in the circuit court, district court, or juvenile court shall remain diligent in keeping track of the updated list of document types that are not available for electronic filing. The ADC shall publish a policies and procedures manual pertaining to electronic filing to be placed on the Administrative Office of Courts' Web site.

IN THE SUPREME COURT OF ALABAMA
December 21, 2018

ORDER

IT IS ORDERED that Rule 26(b)(1), Rule 26(b)(2), Rule 26(c), and Rule 37(g), Alabama Rules of Civil Procedure, be amended to read in accordance with Appendices A, B, D, and F, respectively, to this order and that the Committee Comments to the amendments to Rule 26(b)(1) and Rule 26(b)(2), Rule 26(c), and Rule 37(g) be adopted to read in accordance with Appendices C, E, and G, respectively, to this order;

IT IS FURTHER ORDERED that the amendments of Rule 26(b)(1), Rule 26(b)(2), Rule 26(c), and Rule 37(g) and the adoption of the Committee Comments to the amendments to Rule 26(b)(1) and Rule 26(b)(2), Rule 26(c), and Rule 37(g) are effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 26 and Rule 37:

"Note from the reporter of decisions: The order amending Rule 26(b)(1), Rule 26(b)(2), Rule 26(c), and Rule 37(g) and adopting the Committee Comments to the amendments to Rule 26(b)(1) and Rule 26(b)(2), Rule 26(c), and Rule 37(g) Effective December 21, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 21th day of December, 2018.



FILED
December 21, 2018
9:25 am
Clerk
Supreme Court of Alabama

Clerk, Supreme Court of Alabama

APPENDIX A

Rule 26(b)(1), Alabama Rules of Civil Procedure

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is: (i) relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party; and (ii) proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

APPENDIX B

Rule 26(b) (2), Alabama Rules of Civil Procedure

(2) Limitations.

(A) A party need not provide discovery of electronically stored information from sources that the party identifies to the requesting party as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause for compelling the discovery, considering the limitations of subdivision (b) (2) (B) of this rule. The court may specify conditions for such discovery.

(B) The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines: (i) that the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) that the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) that the proposed discovery is outside the scope permitted by Rule 26(b) (1). The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

APPENDIX C

Committee Comments to Amendment to Rule 26(b)(1) and Rule 26(b)(2) Effective December 21, 2018

Rule 26 is amended to incorporate proportionality into the definition of the scope of discovery in Rule 26(b)(1), paralleling most of the changes made on December 1, 2015, to Rule 26, Federal Rules of Civil Procedure. Previously, various factors bearing on proportionality were part of Rule 26(b)(2)(B), which allows the court to limit discovery. The amendment moves those factors, slightly rearranges and modifies them, and adds two factors. They are now identical to those in Rule 26, Federal Rules of Civil Procedure, and the Committee expects that caselaw interpreting those factors in the federal rule will be helpful in construing our rule.

Moving the factors relating to proportionality should highlight the need to size discovery to the needs of a particular case. All parties should share the responsibility to honor these limits on the scope of discovery. Notably, the change does not place on the party seeking discovery the burden of addressing all proportionality considerations. This is left to the discretion of the trial court. The change is not intended to permit the opposing party to refuse discovery simply by making a boilerplate objection that the discovery sought is not proportional to the needs of the case. The parties have a collective responsibility to provide the court with all appropriate information regarding proportionality, and the court must determine whether the discovery sought is proportional to the needs of the case.

The parties may begin discovery without a full appreciation of the factors that bear on proportionality. A party requesting discovery, for example, may have little information about the burden or expense of responding to particular discovery requests. A party claiming undue burden or expense ordinarily has far better information -- perhaps the only information -- with respect to that determination. A party requested to provide discovery may have little information about the importance of the discovery in resolving the issues as understood by the requesting party. A party claiming that a request is important to resolve the issues should be able to explain the ways in which the information sought bears on the issues as that party understands them. The

court's responsibility, using all the information provided by the parties, is to consider these and all the other proportionality factors in reaching a case-specific determination of the appropriate scope of discovery.

The direction to consider the parties' relative access to relevant information adds new text to Rule 26, providing increased focus on considerations previously implicit in former Rule 26(b)(2)(B)(iii). Some cases involve what often is called "information asymmetry." One party -- often an individual plaintiff -- may have very little discoverable information. The other party may have vast amounts of information, including information that can be readily retrieved and information that is more difficult to retrieve. In practice these circumstances often mean that the burden of responding to discovery lies heavier on the party who has more information, and properly so.

Likewise, the directive to consider "the importance of the discovery in resolving the issues" is new in the text but was previously implicit in the language in former Rule 26(b)(2)(B)(iii) regarding "the needs of the case."

The Committee believes that discovery will normally be effectively managed by the parties and that they will be able to resolve proportionality issues with little dispute in the vast number of actions. However, the proportionality factors added to Rule 26(b)(1) are particularly important for those actions that involve more complexity, including, without limitation, actions involving commercial disputes, class actions, multiparty actions, product-liability actions, and actions involving electronic discovery. In such actions, greater judicial involvement in the discovery process may be necessary and discovery may not operate on a self-regulating basis. The information explosion of recent decades has greatly increased both the potential cost of wide-ranging discovery and the potential for discovery to be used as an instrument for delay or oppression. The amendments reflect the need for continuing and close judicial involvement in cases that do not yield readily to the ideal of effective party management and provides the parties and the court with a standard to use.

The burden or expense of proposed discovery should be determined in a realistic way. This includes the burden or expense of producing electronically stored information. Computer-based methods of searching such information continue

to develop, particularly for cases involving large volumes of electronically stored information. Courts and parties should be willing to consider the opportunities for reducing the burden or expense of discovery as more reliable means of searching electronically stored information become available.

Furthermore, Rule 26(b)(1) has been amended to delete the following language regarding the scope of discovery: "including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." Discovery of such matters is so deeply entrenched in practice that it is no longer necessary to clutter the text of Rule 26(b)(1) with those examples. The discovery identified in those examples should still be permitted under the amended rule when relevant and proportional to the needs of the case.

Although Rule 26(b)(1) has been amended to reflect the transfer of the considerations that bear on proportionality from Rule 26(b)(2), other portions of Rule 26(b)(2) entitled "Limitations" remain in place regarding electronically stored information (subsection (A)) and the frequency and extent of the use of the various discovery methods (subsection (B)). Among the retained limitations is the admonition that a party's discovery may be limited if the party seeking discovery "has had ample opportunity by discovery in the action to obtain the information sought." This limitation is primarily intended to apply to situations in which the costs or burdens of discovery could have been reduced if the discovery had been sought earlier in the litigation (for instance, seeking to depose the same (or a similar) witness to ask new questions absent good cause or seeking to use additional search terms for electronically stored information that has already been searched, or to identify additional custodians of electronically stored information that has already been searched, absent good cause).

APPENDIX D

Rule 26(c), Alabama Rules of Civil Procedure

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or, alternatively, on matters relating to a deposition or production or inspection, the court in the circuit where the deposition or production or inspection is to be taken may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses for the discovery; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. A motion for a protective order shall be accompanied by a statement of the attorney for the moving party stating that the attorney, before filing the motion, has endeavored to resolve the subject of the discovery motion through correspondence or discussions with opposing counsel or, if the opposing party is not represented by counsel, with the opposing party.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

APPENDIX E

Committee Comments to Amendment to Rule 26(c) Effective December 21, 2018

Consistent with the changes to the Federal Rules of Civil Procedure in 2015, which included the simultaneous changes in federal Rule 26(b)(1), the federal corollary to Rule 26(b)(1) and (2), Alabama Rules of Civil Procedure, and federal Rule 26(c), Rule 26(b)(1) and (2) and Rule 26(c), Alabama Rules of Civil Procedure, have been amended. Rule 26(c) specifically is amended to expressly authorize the trial court to allocate the expenses of discovery, including the expense of restoring or replacing lost information under Rule 37(g), Alabama Rules of Civil Procedure. See also Committee Comments to Amendment to Rule 37(g), Alabama Rules of Civil Procedure, Effective December 21, 2018.

APPENDIX F

Rule 37(g), Alabama Rules of Civil Procedure

(g) Failure to Preserve Electronically Stored Information. If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and if it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of use of the information in the litigation, may:

(A) presume that the lost information was unfavorable to the party responsible for its loss;

(B) instruct the jury that it may or must presume the information was unfavorable to the party responsible for its loss; or

(C) dismiss the action or enter a default judgment.

APPENDIX G

Committee Comments to Amendment to Rule 37(g) Effective December 21, 2018

A. Introduction

See section 1 of the Committee Comments to Amendment to Rule 26 Effective February 1, 2010, and the Committee Comments to Adoption of Rule 37(g) Effective February 1, 2010, for general information concerning the changes to Rules 26 and 37 governing discovery of electronically stored information.

Rule 37(g), as adopted in 2010 to be consistent with the 2006 changes to the Federal Rules of Civil Procedure related to discovery of electronically stored information, provided: "Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system." Since the adoption of Rule 37(g), there has been a large increase in the volume of electronically stored information, and discovery related to electronically stored information has likewise increased. Certainly, discovery should not prevent continued routine operation of computer systems necessary for business or other endeavors in this world increasingly connected by computer systems. But it is important for a party aware of the existence of relevant electronically stored information to take reasonable steps to preserve such information. Uncertainties under former Rule 37(g) concerning discovery of electronically stored information and sanctions for failure to preserve electronically stored information had the potential to result in litigants expending significant time and money on preservation efforts in order to avoid the risk of sanctions if a court were to find they did not do enough to preserve electronically stored information.

B. Section (g)

Rule 37(g), as amended, focuses upon the reasonableness of the steps taken to preserve electronically stored information, as well as whether the information can be replaced or restored. Under former Rule 37(g), sanctions could not be imposed if the information was lost as a result of the "routine, good-faith operation" of a party's computer

system and "exceptional circumstances" were not presented. Moreover, the rule did not speak to the curative measures a court could employ when punitive sanctions were to be imposed. Rule 37(g), as amended, specifies measures a court may employ if information that should have been preserved is lost and specifies the findings necessary to justify those measures. It therefore forecloses reliance on the inherent authority of the court to determine when certain measures should be used.

Although former Rule 37(g) indicated that spoliation of electronically stored information should be reviewed using a standard that turns on "good faith," Rule 37(g), as amended, focuses more upon the reasonableness of the steps taken to preserve the information. Too, Rule 37(g), as amended, addresses more specifically the sanctions that may be imposed and recognizes the difference between sanctions intended to cure prejudice to a party, including the assessment of the cost of replacing or restoring the lost information, and punitive sanctions when there has been a deliberate manipulation of computer systems to prevent discovery of relevant and important information.

Under Rule 37(g), as amended, before the court considers measures necessary to cure prejudice to a party, it must find not only that reasonable steps were not taken to preserve relevant information, but also that the information cannot be restored or replaced. To this end the court may, for example, order additional discovery from sources that were previously designated as not reasonably accessible because of burden or cost under Rule 26(b)(2)(A). Further, pursuant to a simultaneous change to Rule 26(c), express authorization is provided to the court to assess the associated costs, including the cost of replacing or restoring the information and attorney fees, to the party who lost the information.

However, it should be remembered that efforts to restore or replace lost information should be proportional to the importance of the lost information.

C. Subsection (g) (1)

The rule does not specify which party bears the burden of proving prejudice once it has been determined that electronically stored information has been lost because of a failure to take reasonable steps to preserve the information. This is left to the discretion of the trial court. As the

Advisory Committee's Notes on the 2015 Amendment to Rule 37, Federal Rules of Civil Procedure, state:

"Determining the content of lost information may be a difficult task in some cases, and placing the burden of proving prejudice on the party that did not lose the information may be unfair. In other situations, however, the content of the lost information may be fairly evident, the information may appear to be unimportant, or the abundance of preserved information may appear sufficient to meet the needs of all parties. Requiring the party seeking curative measures to prove prejudice may be reasonable in such situations. The rule leaves judges with discretion to determine how best to assess prejudice in particular cases."

If the trial court finds that electronically stored information should have been preserved, has been lost because a party failed to take reasonable steps to preserve it, and cannot be replaced or restored and that another party has been prejudiced, it may order appropriate measures to cure the prejudice, but nothing more. Such measures, as noted in the Federal Advisory Committee's Notes, may include prohibiting the party that lost the information from putting in certain evidence. For example, the court may "exclude a specific item of evidence to offset prejudice caused by failure to preserve other evidence that might contradict the excluded item of evidence." Advisory Committee's Notes to the 2015 Amendment of Rule 37, Federal Rules of Civil Procedure. However, the objective must be only to cure the prejudice, and, as the Federal Advisory Committee notes: "Care must be taken ... to ensure that curative measures under subdivision (e)(1) [Rule 37(g)(1), Ala. R. Civ. P., as amended,] do not have the effect of measures that are permitted under subdivision (e)(2) [Rule 37(g)(2), Ala. R. Civ. P., as amended,] only on a finding of intent to deprive another party of the lost information's use in the litigation."

The amendment to our Rule 37(g) requires that the court, not the jury, determine not only whether the lost information should have been preserved, whether the loss resulted from a failure to take reasonable steps to preserve it, and whether it can be replaced or restored, but also whether another party has been prejudiced by the loss and what measures should be taken to cure that prejudice, being mindful that the rule

calls for measures no greater than necessary to cure the prejudice. It was the opinion of the Committee recommending this amendment that the court was in a much better position to make such determinations and that to allow the parties to put in evidence of the loss and to allow the jury to determine the appropriate cure had too much potential to distract the jury. It should be noted that this may be a departure from the Federal Rules of Civil Procedure. Although the corresponding federal rule is not clear as to whether the court or the jury should make such determinations, the Advisory Committee's Notes to the federal rule appear to indicate that the federal rule allows the court to permit the parties to put in evidence of the loss and allow the jury to determine the appropriate cure.

D. Subsection (g) (2)

Rule 37(g) (2), as amended, applies to those rare cases when a party deliberately fails to preserve electronically stored information with intent to prevent another party's use of that information. In other words, the intent required to invoke subsection (g) (2) is the specific intent to deprive another party of electronically stored information and anything short of such specific intent would not involve this subsection. It is noted that the corresponding federal rule addresses the negligent and the intentional loss of electronically stored information, but nothing is directly said in the Advisory Committee's Notes to the federal rule about wanton conduct, although the Federal Advisory Committee's Notes do make clear that "grossly negligent" conduct is to be treated in the same manner as a negligent loss of information. Moreover, if the trial judge believes the loss of information was occasioned by conduct that is more egregious than negligence, but is not intentional, under the Alabama rule the judge is provided discretion under subsection (g) (1) to take appropriate measures to cure the prejudice. This approach also simplifies matters for the trial court, which will have to fit the facts into only one of two, not three, categories (i.e., intentional conduct and nonintentional conduct).

Subsection (g) (2) (A) authorizes the court to presume that the lost information was unfavorable to the party responsible for its loss. This could have application when the court is presiding at a bench trial or ruling on a pretrial motion.

Subsection (g) (2) (B) has application in a jury trial and provides that the court may instruct the jury that it may or must presume the information lost was unfavorable to the party that lost it. The Alabama rule requires that the court make the finding whether the relevant information was lost intentionally (that is, with the intent to deprive another party of the use of the information in the litigation) and, if so, the sanction to impose, which may include an adverse-inference charge. If the court determines that such loss was intentional, it may give the "must presume" adverse-inference charge as the sanction. The court having found that the party intentionally lost the information, it may be inferred that the information lost was both unfavorable to the party that lost it and favorable to the opposing party's case.

Here again, the Alabama Rules of Civil Procedure deviate from the Federal Rules of Civil Procedure, which allow the court to permit the jury to determine the issue of intent and, if the jury finds intent, gives the jury the option of presuming that the information was unfavorable to the party that lost it. This, of course, would require that the parties put in evidence of the loss. Although this is not entirely clear from the federal rule itself, it is clearly expressed in the Advisory Committee's Notes to the federal rule.

This amendment to Rule 37(g) does not change existing Alabama substantive law regarding spoliation of evidence or when a duty to preserve evidence arises. Further, this amendment addresses only electronically stored information and leaves unchanged Alabama law as to sanctions for the failure to preserve other types of evidence or information.

IN THE SUPREME COURT OF ALABAMA
December 28, 2018

ORDER

IT IS ORDERED that Rule 32(A)(1), Alabama Rules of Judicial Administration, be amended to read in accordance with Appendix A to this order and that the Committee Comments to the Amendment of Rule 32(A)(1) Effective January 1, 2019, be adopted to read in accordance with Appendix B to this order;

IT IS FURTHER ORDERED that the amendment of Rule 32(A)(1) and the adoption of the Committee Comments to the Amendment of Rule 32(A)(1) are effective January 1, 2019;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 32:

"Note from the reporter of decisions: The order amending effective January 1, 2019, Rule 32(A)(1) and adopting the Committee Comments to the Amendment of Rule 32(A)(1) Effective January 1, 2019, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 28th day of December, 2018.



Clerk, Supreme Court of Alabama

FILED December 28, 2018 11:22 am Clerk Supreme Court of Alabama

APPENDIX A

Rule 32(A) (1), Alabama Rules of Judicial Administration

(1) Reasons for deviating from the guidelines. Reasons for deviating from the guidelines may include, but are not limited to, the following:

(a) Shared physical custody or visitation rights providing for periods of physical custody or care of children by the obligor parent substantially in excess of those customarily approved or ordered by the court;

(b) Extraordinary costs of transportation for purposes of visitation borne substantially by one parent;

(c) Expenses of college education incurred prior to a child's reaching the age of majority;

(d) Assets of, or unearned income received by or on behalf of, a child or children;

(e) The assumption under the Schedule of Basic Child-Support Obligations that the custodial parent will claim the federal and state income-tax exemptions for the children in his or her custody will not be followed in the case;

(f) The actual child-care costs incurred on behalf of the children because of the employment or job search of either parent exceeds the costs allowed under subsection (B) (8) of this rule by twenty percent (20%) or more;

(g) A parent incurs child-care costs associated with the parent's training or education necessary to obtain a job or to enhance that parent's earning potential, not to exceed a reasonable time as determined by the court. To justify deviating from the guidelines on this basis, the parent must prove by a preponderance of the evidence that the job training or education will benefit the child or children being supported, and child-care costs associated with such training or education shall not exceed the amount required to provide care from a licensed source for the child or children, based on a schedule of

guidelines developed by the Alabama Department of Human Resources; and

(h) Other facts or circumstances that the court finds contribute to the best interest of the child or children for whom child support is being determined.

The existence of one or more of the reasons enumerated in this section does not require the court to deviate from the guidelines, but the reason or reasons may be considered in deciding whether to deviate from the guidelines. The court may deviate from the guidelines even if no reason enumerated in this section exists, if evidence of other reasons justifying deviation is presented.

APPENDIX B

Committee Comments to the Amendment to Rule 32(A)(1)
Effective January 1, 2019

Former subsection (A)(1)(g) was redesignated as subsection (A)(1)(h), and a new subsection (A)(1)(g) was added to allow a trial court to deviate from the child-support guidelines when a parent incurs child-care costs associated with the parent's training or education necessary to obtain a job or to enhance that parent's earning potential.